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Circular No. 2300

Regulations Pertaining to Mining Claims

Under Public Law 167

As contained in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of July 15, 1971

Circular No. 2290

Regulations Pertaining to Mining Claims

Under Public Law 167

As amended in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Revised Regulations issued as of July 23, 1971

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

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Subpart 3710—Public Law 167; Act of July 23, 1955; General

§ 3710.0-3 Authority.

The act of July 23, 1955 (69 Stat. 367, 30 U.S.C. sec. 601), was enacted "to amend the act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only sections 3 to 7, inclusive, of said act hereinafter more fully identified. The word "act" when used in this subpart refers to the act of July 23, 1955. Sections 1 and 2 thereof relate specifically to the Materials Act of July 31, 1947.

Subpart 3711—Common Varieties

§ 3711.1 Provisions of act.

(a) The act in section 3 provides: A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

(b) "Common varieties" includes deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be "common varieties" if a particular deposit has distinct and special properties making it commercially valuable for use in a manufacturing, industrial, or processing operation. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation, requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities, and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not "common varieties." This subsection does not relieve a claimant from any requirements of the mining laws.

Subpart 3712—Proceedings Under the Act

§ 3712.1 Restriction on use of unpatented mining claims.

(a) The act in section 4 provides:

Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided, further,* That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the

disposing agency to have been disposed of from the claim: *Provided, further,* That nothing in this act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severence or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(b) The locator of an unpatented mining claim subject to the act is limited in his use of the claim to those uses specified in the act, namely prospecting, mining, or processing operations and uses reasonably incident thereto. He is forbidden to use it for any other purpose such, for example, as for filling stations, curio shops, cafes, tourist, or fishing and hunting camps. Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, or use it so as to block access to or egress from adjacent public land, or use Federal timber for purposes other than those permitted under the act, or block access to water needed in grazing use of the national forests or other public lands, or block access to recreational areas, or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on located and on adjacent lands.

(c) Mining claims located prior to the date of the act will be subject to the act where determination has been made pursuant to section 5 of the act, that the locator's surface rights are limited as provided in section 4 of the act, or where the owners have waived and relinquished all rights under section 6 of the act, which are contrary to or in conflict with the limitations and restrictions specified as to hereafter located unpatented mining claims in section 4 of the act. See § 3714.3 as to effect on existing rights.

(d) On mining claims subject to the provisions of the act, timber may be used by the claimants only for the purposes permitted under the act, and, except where timber is removed to provide clearance for operations or uses permitted under the act, such timber must be cut in accordance with sound principles of forest management. When timber on a mining claim is disposed of by the Government subsequent to the location of the claim, free use of timber by the mining claimant of like kind and quantity from the nearest timber administered by the disposing agency is provided for, but only when and to the extent that is required for their mining operations and only in kind and quantity substantially equivalent to the timber removed from the claim by the Government. Any such timber may be cut and removed only under the rules and regulations of the administering agency. Regulations governing applications and issuance of permits for the use of such timber on public lands administered by the Bureau of Land Management are contained in Part 5510 of this chapter.

§ 3712.2 Publication of notice.

§ 3712.2–1 Request for publication of notice to mining claimant.

(a) The act in the first paragraph of section 5(a) provides as follows:

The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The "request for publication of notice to mining claimants" authorized to be filed by the above-quoted portion of the act can be filed by the Federal department or agency which has the responsibility for administering surface resources of the lands to which the requested notice would relate. It must describe the land covered by the request by section, township, range, and meridian or, if the land is unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or by a metes and bounds description of such area with a tie to a United States mineral monument.

(b) A request for publication of notice under this subsection shall be filed with the land office of the Bureau of Land Management for the land district in which the lands are situated. No request for publication may include lands in more than one land district.

§ 3712.2–2 Evidence necessary to support a request for publication.

(a) The second and third paragraphs of section 5(a) of the act provide in detail for the filing by the head of a Federal department or agency of certain evidence in support of the request for publication of the notice referred to in § 3712.2–1 as follows:

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

(b) This part of the act requires the filing of an affidavit which may be made by any person or persons over twenty-one years of age who have examined the lands. It must show whether any person or persons were "in actual possession of or engaged in the working of such lands (the lands described in the request for publication of notice) or any part thereof" and, if they were, the name and address of each such person must be given if it can be learned by reasonable inquiry and if it cannot be so learned, the affidavit must show in detail what inquiry or inquiries were made to obtain each such name and address. No definition of the terms "in actual possession" or "engaged in the working of said lands" will be attempted here, but the affidavits should recite what evidences of occupancy or workings were found. The request for publication must also be accompanied by a certificate executed as provided in the third paragraph of section 5(a) and containing the information required by that paragraph to be furnished. If there are no tract indexes, as defined in the act, in the county office of record affecting the lands described in the request for publication, a certificate executed as provided in the said third paragraph of section 5(a) to that effect must be furnished.

§ 3712.2–3 Contents of published notice.

Section 5(a) of the act specifies in detail what the published notice shall contain, as follows:

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim: such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims.

§ 3712.2–4 Publication.

If the request for publication and the accompanying papers conform to the requirements of the act, the Manager or the Director, as may be appropriate, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated. If the notice is published in a daily newspaper it shall be published in the Wednesday issue for nine consecutive weeks, if in a weekly paper, in nine consecutive issues, or if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for nine consecutive weeks.

§ 3712.2–5 **Proof of publication.**

After the period of newspaper publication has expired, the department or agency requesting the publication shall obtain from the office of the newspaper or publication a sworn statement that the notice was published at the time and in accordance with the requirements under the regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3712.2–6 **Service of notice.**

The last paragraph of section 5(a) of the act provides with respect to service of the notice by personal delivery or by registered mail, as follows:

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

§ 3712.2–7 **Service of copies; failure to comply.**

If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5(a) of the act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3712.3 **Failure of claimant to file verified statement.**

If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (See § 3712.2–4), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed except as otherwise provided in § 3712.2–7.

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment.

Subpart 3713—Hearings

§ 3713.1 **Hearing; procedures.**

The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals; shall follow the appeals and contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

§ 3713.2 **Hearing; time and place.**

If any verified statement shall be filed by a mining claimant then the Examiner or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the act as to unpatented mining claims located after its enactment. The Examiner shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such verified statement of the time and place of such hearing at least 30 days in advance thereof. The notice of hearing shall contain a statement specifying the issues upon which evidence will be submitted at the hearing. Such hearing shall be held in the county where the lands in question, or parts thereof, are located unless the mining claimant agrees otherwise.

§ 3713.3 **Stipulation between parties.**

Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be

set as shall be necessary to comply with section 5(c) of the act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3713.4 Effect of decision affirming a mining claimant's rights.

(a) If the final decision rendered in any hearing held pursuant to section 5 of the act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim.

Subpart 3714—Rights of Mining Claimants

§ 3714.1 Recording by mining claimant of request for copy of notice.

Section 5(d) of the act provides as follows:

Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3714.2 Waiver of rights by mining claimants.

Section 6 of the act provides as follows:

The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§ 3714.3 Protection of existing rights; exclusion of reservation in patents.

The act in section 7 provides as follows:

Nothing in this act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this act, or as a result of a waiver and relinquishment pursuant to section 6 of this act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the act are preserved and will continue unless: (a) Claimant fails, subject, however, to the provisions of § 3712.2–7, to file a verified statement in response to a published notice as provided in section 5(b) of the act and § 3712.2–9 (b), it is determined as a result of a hearing pursuant to section 5(c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, permittees, and licensees continue in full force and effect.

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Circular No. 2301

Regulations Pertaining to Mining Claims

Under Public Law 357

As contained in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of July 15, 1971

PART 3720—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIAL UPON PUBLIC LANDS VALUABLE FOR COAL

Subpart 3720—Public Law 357; General

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3720.0–3 Authority.
3720.0–5 Definitions.

Subpart 3721—Notice of Location

3721.1 Recording.

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Subpart 3720—Public Law 357; General

§ 3720.0–1 Purpose.

The act of August 11, 1955 (69 Stat. 679, 30 U.S.C. 541 thru 541i), was enacted:

To provide for entry and location, on discovery of a valuable source material, upon public lands of the United States, classified as or known to be valuable for coal, and for other purposes.

The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior.

§ 3720.0–3 Authority.

The act in section 1 provides in part as follows:

That, subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, public lands of the United States classified as or known to be valuable for coal subject to disposition under the mineral leasing laws and which are open to location and entry subject to the conditions and provisions of the act of August 13, 1954 (68 Stat. 708), unless embraced within a coal prospecting permit or lease, shall also be open to location and entry under the mining laws of the United States upon the discovery of a valuable source material occurring within any seam, bed, or deposit of lignite in such lands.

§ 3720.0–5 Definitions.

(a) The act in section 6 provides in part as follows:

* * * "lignite" shall mean coal classified as ASTM designation: D 388–38, according to the standards established in the American Society for Testing Materials on Coal and Coke under standard specifications for Classification of coals by Rank, contained in public-land deposits considered as valuable under the coal-land classification standards established by the Secretary of the Interior and prescribed in section 30, Code of Federal Regulations, part 201; and "source material" shall mean uranium, thorium, or any other material which is determined by the Atomic Energy Commission pursuant to the provisions of section 61 of the Atomic Energy Act of 1954 to be source material.

(b) The act applies only to deposits of coal coming within the definition set out in the above quotation from the act, and other types of coal deposits are not subject to location under the act, even though found to contain source material.

Subpart 3721—Notice of Location

§ 3721.1 Recording.

(a) The act in section 1 provides in part as follows:

* * * a copy of the notice of any mining location made for source material occurring in any such bed, seam, or deposit, shall be filed for record in the land office of the Bureau of Land Management for the State in which the claim is situated within ninety days after the date of its location.

(b) The act in section 2 provides as to mining claims located prior to May 25, 1955:

That the locator or locators of such a mining claim shall, not later than one hundred and eighty days from and after the date of this Act, post on the claim and file for record in the office where the notice or certificate of location is of record, an amended notice of the mining location stating that such amended notice is filed pursuant to the provisions of this Act and for the purpose of obtaining the benefits thereof; and that a copy of said amended notice is, within the said one-hundred-and-eighty-day period, filed in the land office of the Bureau of Land Management for the State in which the mining location is situated * * *

(c) The act in section 3 provides in part as follows:

* * * upon filing in the land office designated in section 1 hereof, an adequate description of his claim or claims containing such lignite.

(d) Any location notice filed under the above-quoted sections should clearly state that the claim was located for uranium or other source material contained in a bed, seam, or deposit of lignite pursuant to the act of August 11, 1955 (69 Stat. 679). The notice should describe the lands included therein by subdivision, section, township and range, if covered by a public land survey, for a placer claim, and if unsurveyed, or if the location is a lode claim, by a metes and bounds description tied to a corner of the public land survey, or to a mineral monument.

Subpart 3722—Report to Geological Survey

§ 3722.1 Annual report and payment requirements.

(a) The act in section 1 provides in part as follows:

That the claimant to any such mining location shall report annually to the Mining Supervisor of the Geological Survey the amount of lignite mined or stripped in the recovery of such valuable source material during each calendar year and tender payment to him of 10 cents per ton thereon * * * subject to the recording and payment requirements * * *.

(b) Payments shall be by check, draft or money order, payable to the United States Geological Survey, accompanied by a report of the tons of lignite mined or stripped, whether disposed of or not in recovering the source material. Each report should show the name of the claim, identify the location, the calendar year for which payment is made and address of claimant.

(c) Tonnage reports and remittances for claims in Montana, North Dakota, South Dakota, and Northern Wyoming should be sent to the Regional Mining Supervisor, U.S. Geological Survey, Billings, Montana. As to claims in other states, the address of the Regional Mining Supervisor may be obtained from the Director, U.S. Geological Survey, Washington, D.C. 20240.

Subpart 3723—Mineral Patents

§ 3723.1 Reservations of leasable minerals.

(a) The act in section 1 provides in part as follows:

Any mineral patents issued hereunder shall be made subject to the recording and payment requirements of this section and shall contain a reservation to the United States of all Leasing Act minerals owned by the United States other than lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of such material.

(b) Under this section, all debts due the United States on account of coal mined under the location must be paid, before a patent will issue.

§ 3723.2 Exception.

(a) The act in section 1 provides in part as follows:

Mining claims located and mineral patents issued under the provisions of this Act shall not include rights to lignite not containing valuable source material except to the extent it may be necessary to mine or strip such lignite in order to mine the source material * * *

(b) The reservation of leasing act minerals including lignite that do not contain valuable source material which will be inserted in every patent issued under the act, will be subject to the right of the patentee to remove such lignite when necessary to mine source material subject to the provisions of the act.

Subpart 3724—Other Provisions of Act

§ 3724.1 Lodes do not include extralateral rights.

(a) The act in section 1 provides in part as follows:

* * * lode claims, shall not include extralateral rights.

(b) The act in section 2 provides in part as follows.

That no extralateral rights shall attach to any mining location validated under this section.

(c) The right of all locators under the act are therefore limited to the extraction of unreserved minerals within the exterior boundaries of the claim extended vertically downward.

§ 3724.2 Source material not in leasing minerals, right to remove lignite, filing of description.

(a) The act in section 3 provides in part as follows:

SEC. 3. Subject to the provisos of section 2 of this act, any mining location made under the mining laws of the United States, including the Act of August 13, 1954, on lands of the character described in section 1 of this Act, except locations made for lands within the exterior boundaries of a prior coal prospecting permit or lease, if based upon a discovery of valuable source material in deposits other than deposits of Leasing Act minerals, shall include the right to mine, remove, and dispose of lignite containing valuable source material and lignite necessary to be stripped or mined in the recovery of source material contained in lignite, subject to the reporting and payment requirements of section 1 of this Act, and subject to the provisions of the Atomic Energy Act of 1954 (68 Stat. 919), and upon filing in the land office designated in section 1 hereof, an adequate description of his claim or claims containing such lignite.

(b) The act in section 3 also provides in part as follows:

That nothing in this section shall be construed to limit or restrict the rights acquired by virtue of a mining claim heretofore or hereafter located, under the 1872 mining act, as amended, or to impose any additional obligation with respect to mining and removal of source material which does not occur within any seam, bed, or deposit of lignite.

(c) Under these provisions, as to locations which were made under the act of August 13, 1954, at a time when the land was known to contain lignite and was not then in a coal permit or lease, or application for permit or lease, the locator would have a right to mine the lignite containing source material and to mine other lignite only after he had complied with the reporting and payment provisions of section 1 of the act with respect thereto. The owner of such a location, who chooses not to comply with these payment and reporting requirements, may mine and remove any mining law minerals in the location, except such minerals contained in lignite, under authority of the act of August 13, 1954. If such a locator damages or destroys any lignite in connection with his mining operations his liability therefor to the United States will be determined under applicable laws. A location made solely under the 1872 Mining Act would not be subject to the provisions of either the August 13, 1954 Act, or of this act, but unless made upon land not then known to contain lignite it would be invalid.

§ 3724.3 Entryman entitled to exclusive right to locate; exception.

(a) The act in section 4 provides as follows:

The entryman or owner of any land or the assignee of rights therein, including lands granted to States, with respect to which the coal deposits have been reserved to the United States pursuant to the provisions of the act of March 3, 1909 (35 Stat. 844), or the act of June 22, 1910 (36 Stat. 583), excepting lands embraced within a coal prospecting permit or lease, upon the discovery of valuable source material in lignite situated within such entered, granted, or patented lands, who, except for the reservation of coal to the United States would have the right to mine and remove such source material, shall have the exclusive right to mine, remove, and dispose of lignite containing such source material and lignite necessary to be stripped or mined in the recovery of such material, subject to the reporting and payment requirements of section 1 of this act, and subject tc the provisions of the Atomic Energy Act of 1954, upon filing in the land office designated in section 1 hereof, an adequate description sufficient to identify the land containing such lignite.

(b) The description under this section should be by the legal subdivision of the public land survey which contains the deposits.

§ 3724.4 Holder of coal lease entitled to exclusive right to locate source material; exception.

(a) The act in section 5 provides as follows:

The holder of coal leases issued under the provisions of the mineral leasing laws, including the Act of August 7, 1947 (61 Stat. 913), prior to the date of this Act, or thereafter if based upon a prospecting permit issued prior to that date, upon the discovery during the term of such lease of valuable source material in any bed or deposit of lignite situated within the leased lands, shall have the exclusive right to locate such source material under the provisions of this Act but the mining and disposal of such source material shall be subject to the operating provisions of the lease and to the provisions of the Atomic Energy Act of 1954: *Provided,* That the provisions of this section shall not apply to coal prospecting permits or leases on lands embraced within entered, granted, or patented lands described in section 4 of this Act.

(b) The coal lessee for lands not entered, granted or patented, who desires to obtain the benefits of this section must make a mining location and comply with the act and these regulations with respect thereto, and must also comply with the operating regulations (30 CFR Part 211).

§ 3724.5 Expiration of act; exception.

(a) The act in section 10 provides as follows:

Twenty years after the effective date of this act, all lands subject to the provisions of section 1 shall be withdrawn from all forms of entry under this act. All claims made pursuant to the provisions of this act shall expire at that time, except for (1) claims for which patent has already been issued, and (2) claims on which application for patent has already been made and on which patent is subsequently issued: *Provided,* That, if the President shall so provide by Executive Order, the provisions of this section shall not become effective until thirty years after the effective date of this act.

(b) Under this section, no location will be recognized on and after a date 20 years after the date of the act or the expiration of any extension of such period by the President, unless prior to that date an application for a patent has been filed and no patent will issue for any such claim in the absence of evidence of full compliance with the law made prior to that date.

Circular No. 2302

Regulations Pertaining to Mining Claims

Under Public Law 359

As contained in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of July 15, 1971

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS; GENERAL

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals; General

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3730.0–1 Purpose.
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3738.1 Bond or deposit required.
3738.2 Restoration of surface condition.

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals; General

§ 3730.0–1 Purpose.

The act of August 11, 1955 (69 Stat. 681), was enacted "To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes". The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior. The expression "act" shall mean the act of August 11, 1955 (69 Stat. 681), cited in the act as the "Mining Claims Rights Restoration Act of 1955".

§ 3730.0–3 Authority; lands opened.

(a) The act in section 2 provides in part as follows:

All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: * * * that nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

(b) The act in the second proviso thereof provides:

That locations made under the act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948 (62 Stat. 162).

Subpart 3731—Power Rights

§ 3731.1 Power rights retained in the United States.

(a) The act in the first proviso provides as follows:

That all power rights to such lands shall be retained by the United States.

(1) Under this proviso every patent issued for such a location must contain a reservation unto the United States, its permittees or licensees of the right to enter upon, occupy and use, any part of the lands for power purposes without any claim or right to compensation accruing to the locator or successor in interest from the occupation or use of any of the lands within the location, for such purposes. Furthermore, the patent will contain a provision that the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Subpart 3732—Withdrawals Other Than for Powersite Purposes

§ 3732.1 Act ineffective as to other withdrawals.

(a) The act in section 2(c) provides as follows:

Nothing in this act shall affect the validity of withdrawals or reservations for purposes other than power development.

(b) If the power site lands are also affected by any other type of withdrawal which prevents mining location in whole or in part, the provisions of the act apply only to the extent that the lands are otherwise open to location.

Subpart 3733—Risk of Operation

§ 3733.1 Financial risk of operation.

The act in section 3 provides in part as follows:

Prospecting and exploration for and the development and utilization of mineral resources authorized in this act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work.

§ 3733.2 Liability of United States.

The act in section 3 provides in part as follows:

Provided, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Subpart 3734—Location and Assessment Work

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The act in section 4 provides as follows:

The owner of any unpatented mining claim located on land described in section 2 of this act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days after the expiration of any annual assesment year, a statement as to any work done or improvements made during the previous assessment year.

(b) Neither section 4 nor any other provision of the act validates any mining location made prior to the act, which is invalid because made on lands after they were withdrawn or reserved for power purposes and before a favorable determination by the Federal Power Commission under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063; 1075), as amended (16 U.S.C. 792; 818) and the opening or restoration of the lands to location. Section 4 applies to unpatented locations for lands referred to in § 3730.0–3(a) only if:

(1) The location was made on or after August 11, 1955, or

(2) The location was made prior to August 11, 1955, and prior to the withdrawal or reservation of the lands for power purposes, or

(3) The location was made prior to August 11, 1955, on lands restored to location from a powersite reserve or withdrawal subject to section 24 of the Federal Power Act.

(c) The owner of an unpatented location coming under paragraph (b)(1) of this section, within sixty days from the date of location shall file in the United States land office for the district in which the lands lie, a copy of the notice or certificate of location and within sixty days after the expiration of each assessment year, a statement as to the assessment work done or improvements made during that assessment year. For identification purposes only, the copy of the location notice or certificate, filed in the land office under this subsection, should contain a notation that it was filed under the Act of August 11, 1955.

(d) The owner of an unpatented location coming under either paragraph (b) (2) or (3) of this section, before August 11, 1955 shall have filed in the United States land office for the district in which the lands lie a copy of the notice or certificate of location and within 60 days from the date of expiration of the assessment year which ended noon July 1, 1956 and within 60 days from the date of expiration of each succeeding assessment year, shall file a statement as to the assessment work done or improvements made during the previous assessment year.

Subpart 3735—Prior Existing Mining Locations

§ 3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.

(a) The act in section 5 provides:

Nothing in this act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided,* That nothing in this act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(b) Although the act does not limit or restrict the rights of owners of locations to which section 5 refers, such owners shall comply with section 4 by making the filings required either by paragraphs (c) or (d) of § 3734.1 whichever is applicable.

§ 3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

(a) Under section 5 of the act the rights to a location made prior to any future withdrawal or reservation for power development or one on which the locator was diligently working to make a discovery of valuable minerals are not limited or restricted.

Subpart 3736—Mining Operations

§ 3736.1 Placer locator to conduct no mining operations for 60 days.

(a) The act in section 2(b) provides in part as follows:

The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention

to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed, in compliance with the United States mining laws.

(b) Upon receipt of a notice of location of a placer claim filed in accordance with § 3734.1 for land subject to location under the act, a determination will be made by the authorized officer of the Bureau of Land Management as to whether placer mining operations on the land may substantially interfere with other uses thereof. If it is determined that placer operations may substantially interfere with other uses, a notice of intention to hold a hearing will be sent to each of the locators by registered or certified mail within 60 days from date of filing of the location notice.

§ 3736.2 Hearing; notice of protest.

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will indicate the time and place of hearing. The procedures with respect to service of notice of hearing and conduct thereof shall follow the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title) in effect at the time the hearing is held. No publication of the notice will be required but a copy thereof shall be posted in the proper land office of the Bureau of Land Management for a period of not less than 30 days prior to the date set for the hearing. The manager shall give such publicity to the hearing as may be done without expense to the Government.

(b) Any party, other than a Federal agency, desiring to appear and testify at a hearing in protest to placer mining operations must file a written notice of protest in the land office wherein the notice of hearing is posted. Such notice, accompanied by a $10 filing fee, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. The manager shall forward a copy of each such notice that is filed to the mining locator prior to the hearing.

(c) Following the hearing, the examiner will render a decision, subject to the right of appeal by any person admitted as a party to the hearing in accordance with the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title). Each decision by an examiner, or upon appeal, shall provide for the issuance of an appropriate order as provided in section 2(b) of the act; but no such order shall issue until the decision, upon which it is based, becomes final. A certified copy of any order issued shall be filed in the same State or county office in which the location notice has been filed. Any such order permitting mining operations shall be filed at the expense of the mining locator.

Subpart 3737—Use

§ 3737.1 Mining claim and millsite use.

(a) The act in section 6 provides as follows:

> Notwithstanding any other provisions of this act, all mining claims and mill sites or mineral rights located under the terms of this act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

(b) Under this section, a mining claim or mill site may not be used for purposes other than for legitimate mining and milling. The claimant, therefore, may not erect on the mining claim any facility or activity such as filling stations, curio shops, cafes, tourist or hunting and fishing lodges, or conduct such businesses thereon.

Subpart 3738—Surface Protection Requirements

§ 3738.1 Bond or deposit required.

Should a limited order be issued under section 2 (b) (2) of the act, the locator is required to furnish a bond in a sum determined by the Examiner. The bond must be either a corporate surety bond or a personal bond accompanied by cash or negotiable Federal securities equal at their par value to the amount of the penal sum of the bond, together with power-of-attorney to the Secretary of the Interior or his delegate.

§ 3738.2 Restoration of surface condition.

If the locator fails or refuses to restore the surface, appropriate action will be taken against him and his surety, including the appropriation of any money deposited on personal bonds, to be used for the purpose of restoring the surface of the claim involved. Any moneys on deposit or received from surety in excess of the amount needed for the restoration of the surface of the particular claim shall be refunded.

GPO 837-370

Circular No. 2303

Regulations Pertaining to Mining Claims

Under Public Law 585

As contained in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of July 15, 1971

PART 3740—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Subpart 3740—Public Law 585, Multiple Mineral Development; General

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Subpart 3741—Claims, Locations and Patents

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3741.5 Mining claims and millsites located on Leasing Act lands after August 3, 1954.
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3742.2 Recordation of notice of application, offer, permit or lease.
3742.3 Publication of notice.
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Subpart 3743—Hearings

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Subpart 3744—Claimant's Rights

3744.1 Recording by mining claimant of request for copy of notice.
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Subpart 3745—Helium

3745.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

Subpart 3746—Fissionable Source Materials

3746.1 Mining locations for fissionable source materials.

Subpart 3740—Public Law 585, Multiple Mineral Development; General

§ 3740.0-1 Purpose.

The act of August 13, 1954 (68 Stat. 708, 30 U.S.C. 521 et seq.), was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies. The expression "act" when used in this part, means the act of August 13, 1954 (68 Stat. 708). The expression "Leasing Act", when used in this part, refers to the "mineral leasing laws" as defined in section 11 of the act of August 13, 1954 (68 Stat 708).

Subpart 3741—Claims; Locations and Patents

§ 3741.1 Validation of certain mining claims.

The act in section 1(a) provides as follows:

That (a) subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—

(1) Included in a permit or lease issued under the mineral leasing laws; or

(2) Covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or

(3) Known to be valuable for minerals subject to disposition under the mineral leasing laws, shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however,* That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of the act of August 12, 1953 (67 Stat. 539) [not later than December 10, 1953.] an amended notice of location as to such mining claim, stating that such notice was filed pursuant to the provisions of said act of August 12, 1953, and for the purpose of obtaining the benefits thereof: *And provided further,* That, in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of this act, must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period, if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant thereto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

§ 3741.2 Preference mining locations.

The act in section 3 (a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this act, as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this act or which may acquire validity under the provisions of this act. As to any lands covered

by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7 (c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 3741.3 Additional evidence required with application for patent.

All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this act, or the act of August 12, 1953, supra, in addition to matters required in Group 3800 of this chapter, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. If a mining claim was located on or after the date of this act a statement must be filed showing that on the date of location the lands affected were not covered by a uranium lease or an application for a uranium lease. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the act.

§ 3741.4 Reservation to United States of Leasing Act minerals.

Section 4 of the act provides that:

Every mining claim or millsite—

(1) Heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

(2) Located under the mining laws of the United States after the effective date of passage of this act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof) of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 3741.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.

Since enactment of the act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws: This is inclusive of lands in petroleum reserves, except Naval petroleum reserves;

to the same extent in all respects as if such lands were not so included or covered or known.

§ 3741.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the act or validated pursuant to the act may be acquired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites, or after the issuance of patent, if the patent contains a reservation of Leasing Act minerals to the United States as provided in section 4 of the act.

Subpart 3742—Procedures Under the Act

§ 3742.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.

Section 7 of the act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted

under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding regulations, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same.

§ 3742.2 Recordation of notice of application, offer, permit or lease.

Not less than 90 days prior to the filing of such request for publication, there must have been filed for record in the county office of record for each county in which lands covered thereby are situated, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant, offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

§ 3742.3 Publication of notice.

§ 3742.3–1 Request for publication of notice of Leasing Act filing; supporting instruments.

(a) Having complied with the requirement of § 3742.2 the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the appropriate land office. No Request for Publication, or publication, may include lands in more than one Land District.

(b) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease setting forth the date of recordation thereof. The date of recordation shall be presumed to have been the date when the notice was filed for record unless the certified copy of the notice shows otherwise or is accompanied by an affidavit of the person filing the request for publication showing that the notice was filed for record on a date prior to the date of recordation.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, such affidavit or affidavits shall set forth the name and address of each such person unless the affiant shall have been unable, through reasonable inquiry, to obtain information as to the name and address of such person; in which event, the affidavit or affidavits shall set forth fully the nature and the results of such inquiry.

(3) The certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situate as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, together with the address of such person if disclosed by such instruments of record.

(4) A nonrefundable $10 remittance to cover service charge.

§ 3742.3–2 Contents of published notice.

The notice to be published as required by the preceding section, shall describe the lands covered by the application, offer, permit or lease in the same manner as is required under § 3742.2 Such published notice shall notify whomever it may concern, that if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the act of August 13, 1954, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such Request for Publication was filed (which office shall be specified in such notice), and within 150 days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim:

(1) The date of location;

(2) The book and page of recordation of the notice or certificate of location;

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) Whether such claimant is a locator or purchaser under such location; and

(5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (ii) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act, and (iii) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

§ 3742.3–3 Publication.

(a) Upon receipt of a Request for Publication and accompanying instruments, if all is found regular, the Manager, or the Director, as may be appropriate, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Manager, or the Director, as may be appropriate, having general circulation in the county in which the lands involved are situated.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 3742.3–4 Proof of publication.

After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement [7] that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3742.3–5 Mailing of copies of published notice.

Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 3742.3–1.

[7] 18 U.S.C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(b) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the act (see § 3744.1);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 3742.3–1 and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs (a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

§ 3742.3–6 Service of copies; failure to comply.

If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7(a) of the act as to personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3742.4 Failure of mining claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to enactment of the act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in § 3742.3–6.

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

Subpart 3743—Hearings

§ 3743.1 Hearing procedures.

The procedures with respect to notice of such hearing and the conduct thereof, and in respect to appeals, shall follow

the provisions of Appeals and Contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this chapter) relating to contests or protests affecting public lands of the United States.

§ 3743.2 Hearing; time and place.

If any verified statement shall be filed by a mining claimant then the Manager of the Land Office, or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands in question, or part thereof, are located, unless the mining claimant agrees otherwise.

§ 3743.3 Stipulation between parties.

If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3743.4 Effect of decision affirming a mining claimant's rights.

If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

Subpart 3744—Claimants Rights

§ 3744.1 Recording by mining claimant of request for copy of notice.

Section 7(d) of the act provides that:

Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided in subsection (a) of this section 7, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section 7 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 7, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3744.2 Relinquishment by mining claimant of Leasing Act minerals.

Section 8 of the act provides that:

The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 4 of this Act and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

Subpart 3745—Helium

§ 3745.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

(a) Section 9 of the act provides that:

Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive Orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act, will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided*, That the lands shall

not become subject to entry, location, permit, or lease until such time as the Secretary designates in an order published in the FEDERAL REGISTER: *And provided further*, That the Secretary may at any time as a condition to continued mineral operations require the entrymen, locator, permittee, or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(b) No mining location made and no application for permit or lease filed as to Helium Reserve land prior to the time of opening specified in the notice of opening published in the FEDERAL REGISTER will confer any rights on the locator or applicant.

Subpart 3746—Fissionable Source Materials

§ 3746.1 Mining locations for fissionable source materials.

(a) In view of the amendment of section 5(b)(7) of the Atomic Energy Act of 1946 by section 10(c) of the act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said act of August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said act of August 13, 1954, section 10(d) of the act provides:

(d) Notwithstanding the provisions of the Atomic Energy Act, and particulary sec. 5(b)(7) thereof, prior to its amendment hereby, or the provisions of the act of August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a fissionable source material.

(c) Elimination of fissionable source materials reservations.

(a) Any person who holds a patent, conveyance, lease, permit or other authorization issued by the Department of the Interior through the Bureau of Land Management, with a fissionable source material reservation to the United States pursuant to section 5(b)(7) of the Atomic Energy Act of 1946, prior to its amendment above referred to, and who is desirous of having such reservation eliminated from the patent, conveyance, lease, permit or other authorization, must file an application therefor in the appropriate land office.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2304]

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

Disaster Relief

Subpart 1815—Disaster Relief

Sec.
1815.0–3 Authority.
1815.0–5 Definitions.
1815.1 Timber sale contracts.
1815.1–1 Relief granted.
1815.1–2 Applications.

Subpart 1815—Disaster Relief

§ 1815.0–3 Authority.

Disaster Relief Act of 1970 (84 Stat. 1744).

§ 1815.0–5 Definitions.

"Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States, which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States, local governments, and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, and with respect to which the Governor of any State in which such catastrophe occurs or threatens to occur certifies the need for Federal disaster assistance and gives assurance of the expenditure of a reasonable amount of the funds of such State, its local governments, or other agencies for alleviating the damage, loss, hardship or suffering resulting from such catastrophe.

§ 1815.1 Timber sale contracts.

§ 1815.1–1 Relief granted.

(a) Where an existing timber sale contract does not provide relief to the timber purchaser from major physical change, not due to negligence of the purchaser, prior to approval of construction of any section of specified road or other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection therewith, the United States will bear a share of the increased construction costs. The United States' share will be determined by the authorized officer as follows:

(1) For sales of less than 1 million board feet, costs over $1,000;

(2) For sales of from 1 to 3 million board feet, costs over the sum of $1 per thousand board feet;

(3) For sales of over 3 million board feet, costs over $3,000.

(b) Where the authorized officer determines that the damages caused by such major physical change are so great that restoration, reconstruction, or construction is not practical under this cost-sharing arrangement, he may cancel the timber sale contract notwithstanding any provisions thereof.

§ 1815.1–2 Applications.

(a) *Place of filing.* The application for relief shall be filed in the office which issued the contract.

(b) *Form of application.* No special form of application is necessary.

(c) *Contents of application.* (1) The date of issuance of the contract and any identification number.

(2) The particular disaster and its effect upon contract performance.

(3) An estimate of the damages suffered.

(4) A statement of the relief requested.

(5) An estimate of time which will be needed to overcome the delay in performance caused by the disaster.

MITCHELL MELICH,
Acting Secretary of the Interior.

AUGUST 9, 1971.

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Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2305]

PART 2750—CEMETERIES

Subpart 2750—Cemeteries: General

Sec.
2750.0–3 Authority.
2750.0–8 Land subject to sale.

Subpart 2751—Cemeteries: Requirements

2751.1 Applications.
2751.2 Acreage limitation and price.
2751.3 Publication and protests.
2751.4 Patent.

Subpart 2750—Cemeteries: General

§ 2750.0–3 Authority.

The act of March 1, 1907 (34 Stat. 1052; 43 U.S.C. 682), authorizes the Secretary of the Interior to sell and convey lands for cemetery purposes to religious or fraternal associations or private corporations, empowered by the laws under which they are organized or incorporated to hold lands for such purposes.

§ 2750.0–8 Land subject to sale.

Only unreserved and unappropriated nonmineral public lands are available for selection. Applicants will not be granted title to public lands subject to section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U.S.C. 315f), as amended, unless and until the lands are classified as suitable for cemetery purposes and not needed for any other public purpose or higher use.

Subpart 2751—Cemeteries: Requirements

§ 2751.1 Applications.

(a) Applicants under the act must submit, in duplicate, an application to the appropriate office of the Bureau of Land Management. No specific form is required but the application must show (1) the name and address of the association or corporation, (2) legal description of the lands desired or if unsurveyed, sufficient information to identify the location, boundaries, and the area of the tract which must be as nearly rectangular as possible, (3) the authority that empowered the association or corporation to hold lands for cemetery purposes in the State or Territory in which the land is located, (4) the official character and express authority of the officer or officers applying on behalf of the association or corporation, and (5) that the lands are not adversely occupied or used.

(b) Each application must be accompanied by a filing fee of $10.

§ 2751.2 Acreage limitation and price.

(a) No association or corporation can secure title to more than 80 acres of public lands under the act.

(b) Purchase price will be fixed by appraisal of the fair market value of the lands but at not less than $1.25 per acre and must be paid before patent will issue.

§ 2751.3 Publication and protests.

(a) Applicants will be required to publish once a week for five consecutive weeks in accordance with § 1824.3 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) Applicants must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2751.4 Patent.

(a) Patents will issue only for surveyed land and only in the name of the association or corporation.

(b) All patents will contain a clause providing that if the land or any part of it should be sold or cease to be used for cemetery purposes, title shall revert to the United States.

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Circular Distribution List

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2505]

PART 2750—CEMETERIES

Subpart 2750—Cemeteries: General

§ 2750.0-3 Authority.

The act of March 1, 1907 (34 Stat. 1023; 43 U.S.C. 687), authorizes the Secretary of the Interior to sell and convey lands for cemetery purposes to religious or fraternal associations or private corporations, organized by the laws under which they are entered or incorporated to hold lands for such purposes.

§ 2750.0-5 Land subject to sale.

Only unreserved and inappropriated nonmineral public lands are available for selection. Applicants will not be granted title to public lands subject to section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U.S.C. 315f), as amended, unless and until the lands are classified as suitable for cemetery purposes and not needed for any other public purpose or higher use.

Subpart 2751—Cemeteries: Requirements

§ 2751.1 Applications.

(a) Applicants under the act must execute, in duplicate, an application to the appropriate office of the Bureau of Land Management. No specific form is required but the application must show: (1) the name and address of the association or corporation, (2) legal description of the lands desired or if unsurveyed, sufficient information to identify the location, boundaries, and the area of the tract which must be as nearly rectangular as possible, (3) the authority that empowered the association or corporation to hold lands for cemetery purposes in the State or Territory in which the land is located, (4) the official character and express authority of the officer or officers applying on behalf of the association or corporation, and (5) that the lands are not materially occupied or used.

(b) Each application must be accompanied by a filing fee of $10.

§ 2751.2 Average limitation and price.

(a) No association or corporation may acquire title to more than 80 acres of public lands under the act.

(b) Purchase price will be fixed by appraisal at the fair market value of the lands but at not less than $1.25 per acre and must be paid before patent will issue.

§ 2751.3 Publication and protest.

(a) Applicants will be required to publish once a week for five consecutive weeks in accordance with § 1824.2 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice advising all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent. A proof of publication must serve as the affidavit of the publisher of the notice, accompanied by a copy of the notice, and evidence of the qualifications and financial standing of such newspaper.

(b) Applicants must file a statement of the publisher, accompanied by a copy of the notice publisher, showing that publication has been had for the required time.

§ 2751.4 Patent.

(a) Patents will issue only for surveyed land and only in the name of the association or corporation.

(b) All patents will contain a clause providing that if the land or any part of it should be sold or cease to be used for cemetery purposes, title shall revert to the United States.

Report - August 13, 1971

Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2306]

PART 2780—SPECIAL AREAS

Subpart 2785—Sale of Unintentional Trespass Lands

2785.0–1 Purpose.
2785.0–2 Objectives.
2785.0–3 Authority.
2785.0–8 Lands subject to sale.
2785.1 Procedures.
2785.2 Trespass charges.

§ 2785.0–1 Purpose.

These regulations implement the Act of September 26, 1968 (82 Stat. 870). This act authorizes the sale of certain land that was affected by unintentional trepass on or before September 26, 1968.

§ 2785.0–2 Objectives.

The program of the Secretary of the Interior in the administration of the act is to take into consideration the criteria set out in Part 2410 and to sell at public auction for not less than their appraised fair marke value on an orderly basis public lands subject to the act which are not needed for a public purpose. To conform with the specific purposes of the act, lands will be sold in the smallest aliquot parts practicable in each situation.

§ 2785.0–3 Authority.

The Act of September 26, 1968 (82 Stat. 870) authorizes the Secretary of the Interior to sell at public auction any tract of public lands not exceeding 120 acres that was affected by unintentional trespass by the owner or user of contiguous lands on or prior to September 26, 1968, and which contains some land that has been or can be put to cultivation but which is insufficient because of climatic, topographic, ecologic, soil, or other factors to justify a classification as proper for disposal under the homestead or desert land laws. The act permits sales only if the Secretary of the Interior finds the land is not needed for a public purpose. The act limits the amount of land any person may acquire under its terms to 120 acres. The authority to make such sales expires on September 26, 1971, except that sales for which application has been made prior to September 26, 1971, may be completed after that date.

§ 2785.0–8 Lands subject to sale.

(a) The act authorizes the Secretary of the Interior on his own motion or upon application of any person who owns contiguous lands to order into market and sell at public auction for not less than the appraised fair market value any tract of public lands not exceeding 120 acres which on or before September 26, 1968, was affected by unintentional trespass by the owner or user of contiguous lands and which he finds is not needed for public purposes and contains some land that has been or can be put to cultivation.

(b) The Secretary of the Interior has full discretion to determine whether land should be ordered into market under the regulations of this part. Factors that will be taken into consideration in making these determinations are described in Subpart 2410 of this chapter. Lands which are valuable for minerals will not be sold unless the minerals can be reserved to the United States under existing law. (See 30 U.S.C. section 21.)

(c) Only tracts of public land that are classified by the authorized officer under the criteria and procedures in Part 2410 of this chapter can be sold pursuant to the regulations in this section.

§ 2785.1 Procedures.

The provisions of Subpart 2710 apply to sales under this section except that the owner of contiguous lands who wishes to assert his preference right must offer to purchase the lands at the highest bid received. A credit, determined by the authorized officer, will be given to a preference right purchaser for any value added to the land by him or his predecessors in interest during any period of unintentional trespass.

§ 2785.2 Trespass charges.

Purchase of lands in accordance with the act and these regulations shall not relieve any person from liability for unauthorized use of the lands while title was in the United States.

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Circular Distribution List

This circular replaces Circular No. 2261.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER E—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2395]

PART 2720—SPECIAL AREAS

Subpart 2785—Sale of Nonessential Trespass Lands

2785.0-1 Purpose.
2785.0-3 Objectives.
2785.0-5 Authority.
2785.0-6 Lands subject to sale.
2785.1 Procedures.
2785.2 Trespass charges.

§ 2785.0-1 Purpose.

These regulations implement the Act of September 26, 1968 (82 Stat. 873). This act authorizes the sale of certain lands that was acquired by unauthorized trespass on or before September 26, 1968.

§ 2785.0-3 Objectives.

The purpose of the Secretary of the Interior in the administration of the act is to take into consideration the criteria set out in Part 2410 and to sell at public auction for not less than their appraised fair market value on an orderly basis public lands subject to the act which are not needed for a public purpose. To conform with the specific purposes of the act, lands will be sold in the smallest adjustment parts practicable in each situation.

§ 2785.0-5 Authority.

The act of September 26, 1968 (82 Stat. 873) authorizes the Secretary of the Interior to sell at public auction any tract of public lands not exceeding 160 acres that was acquired by unauthorized trespass by the owner or user of continuous lands on or prior to September 26, 1968, and which, contains some land that has been or can be put to cultivation but which is nonarable because of climatic, topographic, economic, and or other factors to justify a classification as proper for dryland under the homestead or desert land laws. The act permits sales only if the Secretary of the Interior finds the land is not needed for a public purpose. The act limits the amount of land any person may acquire under its terms to 160 acres. The authority to make such sales expires on September 26, 1971, except that sales for which application has been made prior to September 26, 1971, may be completed after that date.

§ 2785.0-6 Lands subject to sale.

(a) The act authorizes the Secretary of the Interior on his own motion or upon application of any person who owns contiguous lands to order into market and sell at public auction for not less than the appraised fair market value any tract of public lands not exceeding 160 acres which on or before September 26, 1968, was affected by unauthorized trespass by the owner or user of contiguous lands and which he finds is not needed for public purposes and contains some land that has been, or can be put to cultivation.

(b) The Secretary of the Interior has full discretion in determining whether land should be offered into market under the regulations of this part. Factors that will be taken into consideration in making these determinations are described in Subpart 2410 of this chapter. Lands which are valuable for minerals will not be sold unless the minerals can be reserved to the United States under existing law. (see 30 U.S.C. section 31.)

(c) Only tracts of public land that are classified by the authorized officer under the criteria and procedures in Part 2411 of this chapter can be sold pursuant to the regulations in this section.

§ 2785.1 Procedures.

The provisions of Subpart 2710 apply to sales under this section except that the owner of contiguous lands who wishes to assert his preference right must offer to purchase the lands at the highest bid received. A credit, determined by the authorized officer, will be given to a preference right purchaser for any value added to the land by him or his predecessors in interest during any period of unauthorized trespass.

§ 2785.2 Trespass charges.

Purchaser of lands in accordance with the act and these regulations shall not relieve any person from liability for unauthorized use of the lands while title was in the United States.

Reprint - August 13, 1971

Circular Distribution List

This circular replaces Circular No. 2261.

GPO 887-889

Circular No. 2307

REGULATIONS PERTAINING TO:

DISPOSITION; SALES

RECREATION AND PUBLIC PURPOSES ACT

43 CFR 2740, 2912

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

REPRINT - AUGUST 16, 1971

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

Subpart 2740—Recreation and Public Purposes Act: General

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Subpart 2740—Recreation and Public Purposes Act: General

§ 2740.0–1 Purpose.

(a) Qualified applicants are permitted by the act to acquire available lands for use for any public purposes for which they are authorized by their creating authority to hold lands. Nonprofit associations and nonprofit corporations are permitted, in addition, to acquire lands for use for any recreational purpose consistent with their creating authority.

(b) No applicant can secure lands under the act, however, for any use authorized under any other public land law. This restriction does not apply to the use of lands for residence, business, recreation, and community-site purposes authorized by the act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a, part 2730), as amended.

§ 2740.0–3 Authority.

The act of June 14, 1926, as amended (43 U.S.C. 869; 869–4), authorizes the Secretary of the Interior, under specified conditions, to lease or sell lands for recreational and public purposes. This legislation is referred to as "the act" in the regulations of this part.

§2740.0–7 Cross reference.

For requirements and procedures concerning leases under the Recreation and public purposes act see subpart 2912 of this chapter.

§ 2740.0–8 Lands subject to disposition.

(a) The act is applicable to any public domain lands except (1) lands withdrawn or reserved for national forests, nation parks and monuments, and national wildlife refuges and (2) Indian lands and lands set aside or held for use by or the benefit of Indians. The act is applicable to the Oregon and California Railroad revested grant lands and to the Coos Bay reconveyed wagon-road grant lands only insofar as it applies to leases of land to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

(b) Municipal corporations cannot secure land under this act if it is not within convenient access to the municipality and within the same State as the municipality. Other qualified applicants cannot secure land outside of their political boundaries or other area of jurisdiction.

Subpart 2741—Recreation and Public Purposes Act—Requirements

§ 2741.1 Qualification of applicants.

The following are qualified to make applications under the act; States, Federal and State instrumentalities and political subdivisions, including counties and municipalities; and nonprofit associations and nonprofit corporations.

§ 2741.2 Classification of the land.

(a) Applicants will not be granted title to or use of land under the act unless and until (1) the land is first classified as suitable for the purpose sought and not needed for any other public purpose or is not more valuable and suitable for some other use, including the development of power; and, (2) if the land is under the jurisdiction of any agency or instrumentality outside the Department of the Interior, that agency or instrumentality consents to the proposed disposition.

(b) Applicants will not be granted title to or use of land under the act except for an established or definitely proposed project. A definitely proposed project is a project which has been authorized by competent authority irrespective of whether or not it has been financed and otherwise fully implemented, providing that there exists the probability that it will be fully implemented within a reasonable time.

(c) Classifications made pursuant to the act on the motion of the Government for which no application is filed within 18 months after issuance will be vacated and the land restored to its former status.

(d) Lands in Alaska classified under the act and lands in the States classified pursuant to the act under section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U.S.C. 315f), as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

§ 2741.3 Applications for lands.

Applicants under the act must submit an application accompanied by a petition properly executed on forms approved by the Director. If the lands have been already classified for disposition under the act, no petition is required. Each application must be accompanied by (1) three copies of a statement describing the proposed use of the lands, showing that the application involves an established or definitely proposed project, and giving as much detail

concerning the plan of development and improvement of the project as is necessary to describe the project and its purpose adequately and the proposed disposition of any revenues to be realized from it and (2) a filing fee of $10. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

§ 2741.4 Applications for transfer, change of use under the Act of June 20, 1966.

(a) (1) Applications under the act for permission to add to, or to change the use specified in a lease or patent, applications to transfer title or lease to a third party, applications for a new lease under section 2 of the Act of June 20, 1966 (80 Stat. 210), and applications for renewal of a lease must be filed in triplicate with the appropriate office of the Bureau of Land Management. No form is specified but the matter should be fully explained by the applicant.

(2) Applications for permission to add to or to change use must be accompanied by three copies of the showing required by § 2741.3.

(3) Applications for approval of transfers of title or lease must be accompanied by three copies of a form approved by the Director and executed by the proposed transferee in accordance with § 2741.3 and paragraph 2741.6(a).

(4) Each application must be accompanied by a filing fee of $10.

(5) Prior to approval of an application filed under subparagraph (2) of this paragraph, the land may be reappraised in accordance with § 2741.7 and the beneficiary required to make such payments as are found justified by such reappraisal.

(b) (1) Applications under section 4 of the act for permission to transfer title or to change the use in respect to land covered by any patent issued prior to June 4, 1954, must be submitted in conformance with this section.

(2) The land, however, will not be subject to reappraisal and the beneficiary will not be required to make any payment other than the filing fee.

§ 2741.5 Publications; protests.

(a) Applicants for patents under the act will be required upon demand to publish once a week for four consecutive weeks in accordance with § 1824.3 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent under the applications. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) Such applicants must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2741.6 General limitations and conditions.

(a) The acreage applied for in any one application for patent cannot exceed 640 acres except that applications for patent for State park purposes may embrace as much as 6,400 acres, or where provided by law 12,800 acres.

(b) No applicant in any one calendar year can receive under the act patents for land except in conformance with the following:

(1) Any State may acquire in its own name, or in the name of its State park agency, or in the name of any other agency having jurisdiction over the State park system of said State designated by the Governor of the State as its sole representative for acceptance of lands under this provision for recreational purposes, not more than 6,400 acres involving not more than three sites, except that should any State fail in any one calendar year to receive the maximum herein specified, other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State pursuant to any application on file with the Secretary of the Interior on the last day of said year, to the extent that the conveyances would not have exceeded the limitations of said year. In addition, any State may acquire, in its own name or in the name of an agency or instrumentality of such State not more than 640 acres for each of its programs involving public purposes other than recreation.

(2) Any political subdivision of a State and any nonprofit corporation or nonprofit association may acquire in its own name for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

(c) No patent will be issued under the act unless and until the land is officially surveyed.

(d) All leases and patents issued under the act will reserve to the United States all minerals, together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

(e) Any minerals subject to the leasing laws reserved to the United States in the lands patented or leases under the terms of the act may be disposed of to any qualified person under applicable laws and regulations. Until rules and regulations are issued, other minerals are not subject to disposition or to prospecting except by an authorized Federal agency.

(f) No lease or patent authorizing use of lands for erection and maintenance of advertising displays on public lands adjacent to the National System of Interstate and Defense Highways (23 U.S.C.) will be issued under the regulations of this part, except in conformity

with, and subject to, the national standards prepared and promulgated by the Secretary of Commerce. No lease or patent authorizing use of lands for erection and maintenance of advertising displays on public lands adjacent to any other highway will be issued under the regulations of this part if the proposed display would not conform with the standards or policies established by the appropriate State or local governmental entities which have authority to establish such standards or policies. Where the authorized officer finds that established standards or policies are insufficient in connection with any application under the regulations of this part adequately to promote the safety, convenience, and enjoyment of public travel, to protect the public investment in the highway or in the adjacent public lands, to preserve for the public significant scenic or other recreational values in the public lands, or otherwise to protect the public interest, he shall establish such additional standards as he may deem appropriate in the circumstances, giving due consideration to the need for directional and other official signs, the desirability of permitting, where alternative sites are not readily available, signs advertising legitimate activities being conducted at a location within a reasonable distance thereof, and the interest of the traveling public in, and its need for, specific types of information.

§ 2741.7 Price.

(a) Conveyances under the act for historic monument purposes to a State, county, or other State or Federal instrumentality or political subdivision, will be made without any monetary consideration.

(b) Sales to nonprofit associations or nonprofit corporations will be made at prices fixed through appraisal of the fair market value of the land, taking into consideration the purposes for which the lands will be used.

(c) All other sales will be made at prices fixed through appraisal of the fair market value of the lands or otherwise, taking into consideration the purpose for which the land will be used.

(d) Annual rentals under leases will be fair and reasonable and will be based on the value of the lands as determined by the requirements of paragraphs (b) and (c) of this section.

(e) A patent applicant, when the land has been appraised, will be required to pay the full purchase price before the patent will be issued. The rental under a lease shall be payable in advance. Upon appraisal of the land, a lease applicant will be required to pay at least the first year's rental before the lease will be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term will be returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease.

§ 2741.8 Patent provisions.

All patents under this act will contain a clause providing that if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without consent of competent authority or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States. Transferees must meet all the qualifications of applicants under the act and will be subject to the terms and conditions of the regulations of this part.

Subpart 2912—Recreation and Public Purposes Act

2912.0–7 Cross reference.
2912.1 Nature of interest.
2912.1–1 Terms and conditions of lease.
2912.2 Renewal of leases.

§ 2912.0–7 Cross reference.

The general requirements of law and regulation and procedures under the Recreation and Public Purposes Act are contained in Part 2740 of this chapter.

§ 2912.1 Nature of interest.

§ 2912.1–1 Terms and conditions of lease.

(a) The term of leases under the act will be fixed by the authorized official but will not exceed 25 years. Leases will be renewable at the discretion of such official.

(b) Leases will be issued on a form approved by the Director and will contain the usual terms and conditions required by law, public policy, and, insofar as possible, by Department of the Interior procedure.

(c) Leases will contain such terms and conditions which the signing officer or the administering agency considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interests.

(d) Leases will be terminable by the authorized official upon failure of the lessee to comply with the terms of the lease, upon a finding that all or part of the land is being devoted to other than the use authorized by the lease, or upon a finding that the land has not been used by the lessee for the purpose specified in the lease for any consecutive period specified by the authorized official but not more than 5 years or less than 2 years.

(e) Leases will not be transferable except with the consent of the proper official. Transferees must meet all the qualifications of applicants under the act and will be subject to all the terms and conditions of the regulations in this part.

(f) A lessee under the act will not be permitted to cut timber from the leased lands without prior permission from the appropriate officer.

(g) Any minerals subject to the leasing laws reserved to the United States in the lands patented or leases under the terms of the act may be disposed of to any qualified person under applicable laws and regulations. Until rules and regulations are issued, other minerals are not subject to disposition or to prospecting except by an authorized Federal agency.

§ 2912.2 Renewal of leases.

(a) Applications for renewal of leases must be accompanied by three copies of a statement showing, in detail sufficient to describe the situation adequately, the past use of the lands and the proposed use after renewal of the lease.

(b) Section 2 of the Act of June 20, 1966, authorizes the issuance of new leases in lieu of leases which were in force on June 20, 1966. Applications for new leases must be accompanied by consent of the lessee to cancellation of the existing lease upon the issuance of the new lease and by three copies of a statement showing (i) the need for a new lease and (ii) any changes in the terms and conditions of the lease which the applicant may desire.

This Circular replaces Circulars Nos. 2221 and 2226.

GPO 837-606

Circular No. 2308

REGULATIONS PERTAINING TO:

DISPOSITION; SALES

TOWNSITES

43 CFR 2760

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Reprint
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Circular No. 2308

REGULATIONS PERTAINING TO:

DISPOSITION; SALES

TOWNSITES

43 CFR 2760

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Reprint
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PART 2760—TOWNSITES

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Subpart 2760—Townsites: General

§ 2760.0–3 Authority.

(a) *Reservation of public lands for town site purposes.* Public lands have been reserved by the President for town site purposes, from time to time, under section 2380 of the Revised Statutes (43 U.S.C. 711). Reservation for such purposes may now be made by public land order, by the Secretary of the Interior, pursuant to Executive Order No. 9337 of April 24, 1943 (3 CFR, 1943 Cum. Supp.). The reservations may be made by the Secretary of the Interior on his own motion, or petitions may be addressed to him requesting the reservations. Such petitions should be filed with the State Director for the area in which the lands are situated. (E.O. 9337 was superseded by E.O. 10355.)

§ 2760.0–6 Qualifications of town-lot purchasers.

Unless otherwise provided by law, every person purchasing a town lot at public or private sale, under any law governing the sale and disposal of town sites on the public domain, will be required to furnish evidence that he is a citizen of the United States or has declared his intention to become such and every corporation purchasing a town lot will be required to furnish evidence, including a certified copy of its articles of incorporation, showing that it is a corporation organized under the laws of the United States or of any State, Territory, or possession thereof and that it is authorized to acquire and hold real estate in the State in which the town site is situated.

Subpart 2761—Procedures

§ 2761.1 Survey and appraisal.

(a) *Survey of reserved land into blocks and lots; appraisal thereof.* Town sites reserved under section 2380, Revised Statutes, or under any other law directing their disposition under section 2381, Revised Statutes (43 U.S.C. 712) will be surveyed, when ordered by the Bureau of Land Management, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the State Director. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for pubilc purposes will not be appraised.

(b) *Schedule of appraisement; disposal of copies thereof.* The schedule of appraisement must be prepared in triplicate on forms furnished by the State Director, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to said officer.

§ 2761.2 Sale.

(a) *Time, place and terms of sale.* A notice of sale will be issued in each case by the authorized officer prescribing the time when, the place where, and the terms under which the lots will be offered.

(b) *Publication in Federal Register; sale to be given other publicity.* Every notice of sale shall be published in the FEDERAL REGISTER and every sale shall be given such other publicity, without cost to the Government, as may be deemed proper by the authorized officer.

(c) *Lot purchase limitation authorized; manner of making bids.* In appropriate cases the authorized officer may limit the number of lots each person may buy. Bids and payments may be made through agents, but not by mail, or at any time or place other than that fixed in the notice of sale.

(d) *Penalty for combinations in restraint of the sale.* All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or prevent the sale, and all persons so offending will be prosecuted under 18 U.S.C. 1860.

(e) *Reoffering at public sale; private entry.* (1) An offering at public sale may be adjourned or closed, in the discretion of the State Director or other officer conducting the sale. If adjourned, the unsold lots will be held for future disposition at public sale. If closed, the unsold lots will become subject to private entry at the appraised price.

(2) Lots sold at public sale and forfeited because of nonpayment of the purchase price, or for any other reason, will be held for further offering at public sale, unless reentry of the lots at private sale, at a designated price, is authorized by the notice under which the lots are sold.

(3) Lots sold at private sale should be accompanied by an application therefor, signed by the applicant.

§ 2761.3 Rights of transferees of town lots.

The purchaser of a town lot, which is sold on the installment plan, may transfer his equitable interest in the lot, prior to the payment of the last installment of the purchase price, but the Government will not recognize anyone but the original purchaser and will issue all necessary papers and also the patent in his name. By such course, the Government is relieved of all unnecessary responsibility and the patent, when issued, inures to the benefit of the transferee.

Subpart 2762—Town Sites Platted by or for Occupants

§ 2762.1 Town site settlement.

Section 2382 of the Revised Statutes, as amended by the act of August 24, 1954 (68 Stat. 792) and sections 2383, 2384, and 2386 of the Revised Statutes (43 U.S.C. 713–715, 717), authorize the platting of town sites by or for the occupants and the disposal of such town sites, where town site settlement has been or may be made upon unreserved public lands subject to such settlement. Public lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, or 6964 of February 5, 1935, are not subject to occupation for town site purposes unless first classified for such occupation, pursuant to part 2450.

§ 2762.2 Filing required.

(a) *Filing with county recorder of plat, field notes, and statement of improvements.* (1) The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets, and alleys to be made, and the plat and field notes thereof to be filed with the recorder of the county in which the land is situated. The plat must show (i) that the land does not include an area in excess of 640 acres; (ii) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of the townsite survey are tied to a designated, permanent, and thoroughly identified monument; (iii) that the streets, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town, are correctly delineated thereon; and (iv) the exterior lines of all existing railroad rights-of-way and station grounds. The lots shall conform in size to local ordinances or accepted local standards for subdivision platting, or in the absence of such ordinances or standards, to standards prescribed by the authorized official of the Bureau of Land Management. The above-required facts should be embodied in the statement of the surveyor entered upon the margin of the plat.

(2) A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and over the signature of the party acting for and on behalf of the occupants of the land.

(b) *Filing in land office, in duplicate, of transcript of plat, field notes, and statement.* (1) Within one month after filing such plat, field notes, and statement, a transcript thereof in duplicate, each copy duly verified by the certificate of the county recorder, and accompanied by the statement of the two persons that such town has been established in good faith, and showing the number of inhabitants thereof and when it was so established, shall be filed with the manager of the land office having jurisdiction over the land district in which the town site is located.

(2) All filings made in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

§ 2762.3 Notice to be issued; preemption proofs; public sale of unclaimed lots.

After the town site plat has been approved by the Bureau of Land Management, a notice will be published in the FEDERAL REGISTER stating the conditions under which preemption proofs may be submitted by the lot claimants and the time, place, and conditions for the offering of the unclaimed lots at public sale. This notice should be given such other publicity without cost to the Government as is deemed appropriate.

§ 2762.4 Survey.

(a) *Adjustment of town-site survey to township survey.* When the town site is upon land over which the township surveys have not been extended, the State Director will be notified and thereafter, when the township surveys have been extended over the land, the exterior lines of the town site may be adjusted thereto where it can be done without impairing vested rights.

(b) *Survey by Department of the Interior; increase in price of lots.* Refusal or failure to file such transcript, plat, field notes, and statement, with the testimony, as required, within 12 months from the establishment of a town on the public domain, will authorize the Bureau of Land Management to cause a survey and plat to be made thereof, the lots in which shall be disposed at an increase of 50 per centum on the minimum price.

§ 2762.5 Minimum price of lots.

The minimum price for all lots is $10 per lot, except in cases where the survey into lots and blocks is made by the Government, in which case the minimum price is $15 per lot.

§ 2762.6 Preemption rights.

(a) *Preemption claims, publishing and posting of proof notices.* (1) A preemption right of purchase at the minimum price, at any time before the day fixed for the public sale, of not exceeding two lots, is accorded an actual resident, to secure which he must file in the land office his application therefor, and therein state the date of settlement, the value and character of his improvements thereon, that he is 21 years of age or over or the head of a family, and that he is a citizen of the United States or has declared his intention to become such. The notice of intention to make proof must be filed by the applicant and the notice for publication must be issued, and posted by the manager, and published at the expense of the applicant once a week for 5 consecutive weeks, in accordance with § 1824.3 of this chapter.

(2) All notices of intention to make proof of preemption claims pursuant to this section must be accompanied by a service charge of $5 which will not be returnable.

(3) Where a husband and wife are joint settlers, and the husband purchases two lots, as stated, the wife may also purchase an "additional lot" upon which she has placed substantial improvements.

(b) *Preemption proof.* Preemption proof may be made before the manager, or any officer duly authorized by law, and must show (1) due publication of the manager's notice, (2) the claimant's age, (3) his citizenship, and (4) his actual residence upon one lot and substantial improvements on the second lot, if two lots be included in the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price for the lot or lots must be paid when the proof is made. Entry of public lands under other laws, or in other town sites, or ownership of more than 320 acres, will not disqualify an applicant from making such entry. No entry can be made of an improved lot on which the claimant does not reside unless his residence lot is included in the same or a previous entry.

§ 2762.7 Conflicts.

(a) *Hearings.* Hearings will be ordered and conducted in accordance with Part 1840 and 1850 of this chapter, where two or more adverse applications are filed for the same lot, or where a sufficient contest affidavit is filed against an application on or before the day fixed for making proof but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within 30 days from notice thereof.

(b) *Conflicting mineral claims.* Mineral surveys, locations, applications, and entries covering lots in such town sites will not prevent the entry of such lots hereunder and the issuance of patent thereon, but such mineral claims, if held under prior and valid mineral rights, are amply protected by the law from prejudice by the allowance of such town-lot entries and patents, and paramount patents may be issued thereafter to such mineral claimants.

(c) *Lots wholly or partly covered by mineral patents.* Lots wholly covered by outstanding mineral patents are not subject to entry under the town site law, and applications therefor will be rejected. Lots partly covered by mineral patents may be entered at the price fixed for the whole lot, but the certificate and receipt must contain at the end of the description an exception clause as follows: Excepting and excluding the portion of said lot (or lots) embraced in mineral patent (or patents) heretofore issued.

§ 2762.8 Forfeiture of preemption right.

All right to preempt and purchase occupied and improved lots for which no entry has been allowed prior to or on the date fixed for the public sale will be forfeited unless a contest be pending thereon, and such lots will be offered for sale together with the unoccupied lots. When notified of the date fixed for the public sale, the manager will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale.

§ 2762.9 Conduct of sale; minimum sale price; private entry.

The public sale will be conducted in the form and manner provided for the sale of town lots under § 2761.2. No lot shall be sold for less than the minimum price fixed therefor, and such lots as may not be disposed of at public sale shall thereafter be liable to further public sale or to private entry at such minimum, or at such reasonable increase or diminution as the authorized officer may order after at least 3 months' notice thereof, to be published in the FEDERAL REGISTER.

Subpart 2763—Townsites Entered By Trustees

§ 2763.0-3 Authority.

Public lands settled upon and occupied as a town site are thereby segregated from entry under the agricultural land laws, and may be entered under sections 2387 to 2389, Revised Statutes (43 U.S.C. 718–720), subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, Revised Statutes (43 U.S.C. 717, 721–723).

§ 2763.0-8 Lands subject to entry.

(a) Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934 and February 5, 1935, respectively, is not subject to town-site settlement until such settlement has been authorized by classification. (See 2450.)

(b) *Government reservations not subject to entry.* Reservations for the use of the United States Government are not subject to town-site entry.

§ 2763.1 General requirements; who may make town-site entry.

If the town is incorporated, the entry must be made by the corporate authorities or by the mayor or other principal officer authorized so to do by resolution or ordinance of the town board or city council. If the town is not incorporated, the entry must be made by the judge of the county court upon petition addressed to him therefor, signed by such number of actual occupants of lots therein as may be required by the laws of the State in which the town is situated. Private individuals, organizations, or corporations are not authorized to make such entries.

§ 2763.2 Entry must be made in trust.

(a) The entry must be made in trust (1) as to the occupied lots, for the several use and benefit of the occupants thereof according to their respective interests, and (2) as to the unoccupied lots, for the use and benefit of the municipality, the public, or the occupants collectively as a community. Such entries cannot be made for the benefit of one individual, or organization, or corporation, but only for the benefit of the actual inhabitants and occupants of an established town. Prospective town sites can not be so entered.

(b) The execution of the trust as to the disposal of the lots and the proceeds of sales is to be conducted under regulations prescribed by the State laws. Acts of trustees not in accordance with such regulations are void.

§ 2763.3 Area that may be entered.

(a) The amount of land that may be entered under sections 2387 to 2389 inclusive of the Revised Statutes (43 U.S.C. 718–720) is proportionate to the number of inhabitants. One hundred and less than 200 inhabitants may enter not to exceed 320 acres; 200 and less than 1,000 inhabitants may enter not to exceed 640 acres; and where the inhabitants number 1,000 and over, an amount not to exceed 1,280 acres may be entered; and for each additional 1,000 inhabitants, not to exceed 5,000 in all, a further amount of 320 acres may be allowed. When the number of inhabitants of a town is less than 100 the town site shall be restricted to the land actually occupied for town purposes, by legal subdivisions.

(b) Entry cannot be made hereunder of a greater quantity of land than 2,580 acres, unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

§ 2763.4 Entry of unsurveyed land; special survey therefor.

Unsurveyed public land upon which a town has been established may be entered under sections 2387 to 2389, inclusive, of the Revised Statutes (43 U.S.C. 718–720). In such case a special survey should be procured by application to the State Director therefor, the cost of which survey will be paid out of the available appropriations for public surveys. When the plat of such survey is filed in the land office, application may be made to enter the land described therein.

§ 2763.5 Declaratory statements.

(a) *Filing.* Declaratory statements may be filed as the initiatory step for the entry of the land in all cases where the occupants are not ready to apply for entry, and should be so filed in order to protect their rights. The statement should be signed and filed by the officer entitled to make entry under the law, and should show the number of inhabitants, that the land is occupied for trade, business, and other town-site purposes, and the date when first so occupied, and declare the purpose of the occupants to enter it under the town-site laws. It should include only such lands as the town is entitled to enter by Government subdivisions where surveyed, and if not surveyed the land should be described so it may be easily identified.

(b) *Proof; posting and publication of proof notice.* The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases, and in manner and form and for the time provided in the act of March 3, 1879 (20 Stat. 472; 43 U.S.C. 251). The notice must be published once a week for five consecutive weeks in accordance with § 1824.3 of this chapter. The proof may be made before the manager or any officer duly authorized by law, and must show, by record or documentary evidence, where such evidence is usually required, and where not so required, by the testimony of at least two of the advertised witnesses, (1) due publication of the manager's notice; (2) if an incorporated town, proof of incorporation, which should be a certified copy of the order of incorporation, or, if by legislative enactment, a citation to such act; (3) certified record evidence of the

election, qualification, and the authority of the officer making entry; (4) the number of town-site occupants and claimants on each occupied Government subdivision; (5) the number of inhabitants in the town site; (6) the character, extent, and value of town-site improvements located on each Government subdivision; and (7) the date when the land was first used for town-site purposes.

§ 2763.6 Existing rights.

(a) *Conflicting mineral claims.* (1) Under sections 2386 and 2392 of the Revised Statutes (43 U.S.C. 717, 722), and section 16 of the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 728), the title to lands acquired under sections 2387 to 2389, inclusive, of the Revised Statutes (43 U.S.C. 718–720) will be subject to all valid prior rights to unpatented mining claims or possessions held under existing law, and paramount patents may be issued thereafter to such mineral claimants, notwithstanding the prior town-site patent.

(2) All lands covered by patented minerals claims must be omitted from town-site entries. Government subdivisions of land, made fractional by the omission of such patented claims, will be designated by lot numbers on segregation diagram prepared by the State Director.

(b) *Prior use and occupation of land as mill site.* The continued use and occupation within a town site of a duly located mill-site claim under section 2337, Revised Statutes (30 U.S.C. 42), from a time prior to a settlement and occupation thereof for town-site purposes, will defeat the rights of the claimant under the town-site laws to any part of the land within such mill site.

§ 2763.7 Change in method of entering town site.

Where proceedings have been had for the entry of lots under sections 2382 to 2386, inclusive, of the Revised Statutes (43 U.S.C. 713–717) but no patent has issued thereunder, the occupants may avail themselves, if the town authorities choose to do so, of the provisions of said sections 2387 to 2389, Revised Statutes (43 U.S.C. 718–720) and make proof and entry thereunder: *Provided, however,* That in addition to the minimum price for the land applied for there shall be paid, before patent issues therefor, by the parties applying for such change of entry, all costs of surveying and platting such town site and expenses incident thereto incurred by the Government under the provisions of said sections 2382 to 2386. On application to the Bureau of Land Management the applicants will be informed of the amount of said expense to be paid in excess of the purchase price of the land, in order to effectuate such change of entry.

§ 2763.8 Additional entries of contiguous tracts.

Where town-site entry has been or may be made, under the provisions of sections 2387 to 2393 of the Revised Statutes (43 U.S.C. 718–723), additional entries may be made, under the provisions of section 4 of the act approved March 3, 1877 (19 Stat. 392; 43 U.S.C. 727), of such contiguous tracts as may be occupied for town-site purposes, but such additional entry shall not, together with all prior entries made for such town site, be in excess of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in section 2389, Revised Statutes: *Provided, however,* That such area shall not exceed 2,560 acres. Such additional entries will be made in the same manner and under the same regulations as are provided for entries under said sections 2387 to 2393, inclusive.

Subpart 2764—Reclamation Projects

§ 2764.1 Procedure governing appraisement and sale.

The Commissioner of Reclamation shall from time to time, with the concurrence of the appropriate officer of the Bureau of Land Management, authorize the appraisement and sale of lots in reclamation town sites. Notices of sale will be issued and other actions taken by those officers in accordance with the town site regulations contained in section 2760.0–3, 2761.1 and 2761.2.

§ 2764.2 Installment payments.

Under authority of section 2 of the act of June 11, 1910 (36 Stat. 466; 43 U.S.C. 565), the order for sale may authorize the payment of the purchase price of lots, sold in town sites created under the laws in said act mentioned, to be made in annual installments.

§ 2764.3 Reappraisement and sale of unsold lots.

The Commissioner of Reclamation, with the concurrence of the authorized officer of the Bureau of Land Management, may direct that unsold lots shall be reappraised under the first section of the said act of June 11, 1910 (36 Stat. 465; 43 U.S.C. 564). The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value.

§ 2764.4 Public reserves; patents therefor.

The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances, the municipality shall apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required in § 2766.1.

Subpart 2765—Grant of Lands in Reclamation Town Sites for School Purposes

§ 2765.1 Application to be made by school district; action thereon.

(a) At any time after the approval of the survey of any Government reclamation town site and the subdivision thereof into town lots, with appropriate reservations for public purposes, a school district, in order to obtain title under the act of October 31, 1919 (41 Stat. 326; 43 U.S.C. 570), should file through its proper officers, its application for patent to the unreserved, unappropriated, undisposed of lands it may desire, not exceeding 6 acres in area, therein, specifically describing the same by lot and block numbers, as delineated and designated on the approved town-site plat; submit sufficient and satisfactory reasons showing that the area applied for is needed for its use; that the land is unappropriated and subject to disposition under the act, in order that the Department of the Interior may be fully advised that there is no adverse claim for the land applied for; and therewith furnish the certificate of the superintendent of public instruction, or other officer performing such function, having jurisdiction over the county in which the town site is situate, showing that the district is a duly organized district under the laws of the State and entitled to hold real estate in its corporate name.

(b) The applicant must also procure and file with the application, at the time of the filing of the same or as early as practicable after the filing of such application, a statement by the official having charge of the project in which the land is located, showing that the disposal of the land applied for will not in any manner interfere with said project, such statement having been previously approved by the Commissioner of Reclamation.

(c) There is no limit to the number of applications which may be filed by a qualified school district, the only limitation being that the total acreage which may be patented to such a district shall not exceed 6 acres in area within any Government reclamation town site situated within such school district. Whenever, therefore, more than one application is filed by the same applicant, such applicant should refer by serial number, to all previous applications filed by it.

(d) The application and proof must be filed in the land office wherein the land applied for is situate, and if the manager thereof finds the same sufficient and if the Bureau of Reclamation makes favorable report upon the said application, the manager will issue certificate of entry, the same to provide that if any land so conveyed cease entirely to be used for school purposes title thereto shall revert to and revest in the United States.

Subpart 2766—Public Reserves in Oklahoma Town Sites

§ 2766.1 Applications for patents on behalf of the municipalities.

Applications for patents to the tracts reserved for public purposes, in all towns in Oklahoma created under section 22 of the act of May 2, 1890 (26 Stat. 91; 43 U.S.C. 1094), or under any other act where tracts have been reserved for such purposes under said section 22, may be filed on behalf of the municipalities whose corporate limits cover the land in which such reservations are situated. The application should be made by the mayor or other proper municipal officer and describe the reservations to be patented according to the approved plats of said town site, and the same should be accompanied with the proof of the municipal organization of the town, similar to that above provided for the disposition of the proceeds derived from the commutation of homestead entries for town-site purposes under said section 22, and proof must also be filed therewith of the authority of the officer filing the application to make the same with the proper record evidence of his election and qualification as such officer. The application and proof must be filed in the Bureau of Land Management and if the same is found sufficient, the certificate of entry will issue in the form provided therefor.

This circular replaces Circulars 2162 and 2187.

GPO 837-555

Circular No. 2309

REGULATIONS PERTAINING TO:

DISPOSITION; SALES

SPECIAL AREAS

43 CFR 2781

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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Subpart 2781—Choctaw-Chickasaw

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2781.0-3 Authority.
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2781.4 Disposal of materials.
2781.5 Rights-of-way.
2781.6 Contributions and donations of money, services, and property.

§ 2781.0-3 Authority.

(a) The act of August 3, 1955 (69 Stat. 445), authorizes the Secretary of the Interior to provide for the management and disposition of any interest of the United States in those lands which were reconveyed to the United States by deeds of conveyance executed on November 29, 1950 by the principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation or which have been or may be reconveyed to the United States by any further or supplemental conveyances made under the authority of the Interior Department Appropriation Act of June 28, 1944 (58 Stat. 463, 483), the joint resolution of June 24, 1948 (62 Stat. 596), and the First Deficiency Appropriation Act of May 24, 1949 (63 Stat. 76, 84). Such reconveyed lands are referred to in this Part as "Choctaw-Chickasaw lands" and the act of August 3, 1955 is referred to as "the act".

(b) The act of June 28, 1944 (58 Stat. 463, 483), declared the Choctaw-Chickasaw lands to be part of the public domain subject to the applicable public land mining and mineral leasing laws.

§ 2781.1 Disposal of surface fee.

Subject to the reservation of all rights of the United States to minerals in the lands and to the payment of the proportionate cost of any survey which may be necessary to describe properly any lands to be disposed of under the act, Choctaw-Chickasaw lands are subject to disposal as follows:

(a) Private sale of tracts to any person having a legal or equitable interest therein under the regulations of § 2781.1-1.

(b) Private sales to occupants under the regulations of § 2781.1-2.

(c) Public sale of tracts and private sale of tracts unsold after offer at public auction, under the regulations of § 2781.1-2.

(d) Private sale of tracts under the provisions of the act of June 4, 1954 (68 Stat. 173; 42 U.S.C. 869) and the regulations thereunder (Part 2740 of this chapter).

§ 2781.1-1 Sales to persons claiming a legal or equitable interest.

(a) Subparagraph 2(a)(2) of the act authorizes the Secretary of the Interior to relinquish any tract of Choctaw-Chickasaw lands to any person having a legal or equitable interest therein.

(b) To qualify under subparagraph 2(a)(2) of the act, a claim of legal or equitable interest must rest on uncertainty as to the title to the tract applied for, resulting from such things as inadequate surveys, judgments, decrees, or orders of condemnation in court proceedings in which the United States did not consent to be a party to the suit, or otherwise. No such claim will be recognized if it is based solely on a lease or permit from the Bureau of Land Management or its predecessors in interest to the lands.

(c) Any individual, group, or corporation which believes it has a legal or equitable interest in one or more tracts of Choctaw-Chickasaw lands may make an application therefor by filing, in duplicate, an application captioned "Claim of legal or equitable interest in Choctaw-Chickasaw lands" with the Manager of the land office at Santa Fe, New Mexico. No particular form of application is required but it must be typewritten or in legible handwriting and signed by the applicant. Every application must be accompanied by a filing fee of $10 which will be nonreturnable. The application must contain a description of the land claimed sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. It must contain the full name and full post-office address of the claimant. It must also contain a full statement showing the basis for the claim of legal or equitable interest in the lands. The applicant may be called upon to submit documentary or other evidence in support of his claim. Valuable documents submitted by the applicant will be returned to him.

(d) The applicant will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the land office at Santa Fe, New Mexico, their objections to the issuance of a relinquishment under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication had been had for the required time.

(e) The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than a total of $10.

(f) Applicants will be required to make payment of the sale price of the land and for the cost of survey, if any, within the time stated in the request for payment.

§ 2781.1–2 Sales to occupants.

(a) Subparagraph 2(b) of the act authorizes the Secretary of the Interior, in selling any tract of Choctaw-Chickasaw lands, to grant a preference right of purchase to any occupant of the tract who has, or whose predecessors in interest have, lawfully and continuously occupied the tract for home, business, or school purposes since April 30, 1949, or earlier.

(b) Before offering any tract at public sale, the land office manager at Santa Fe, New Mexico, will give any such occupant an opportunity to purchase the tract at its fair market value as appraised by the authorized officer of the Bureau of Land Management. In the event the occupant elects to purchase the tract, he will be required to comply with the requirements of paragraphs 2781.1–1 (d) and (f). In the event the occupant elects not to purchase the tract, the land office manager will give the occupant an appropriate period within which the occupant, in the occupant's discretion, may remove improvements on the tract constructed by him or his predecessors in interest or elect to receive compensation for such improvements from the successful purchaser of the tract in an amount equal to the appraised value of the improvements as determined by the authorized officer of the Bureau of Land Management.

§ 2781.1–3 Public and subsequent private sales.

(a) Subparagraph 2(a)(1) of the act authorizes the Secretary of the Interior to sell tracts of Choctaw-Chickasaw lands at public sale to the highest responsible bidder, or at private sale.

(b) Upon request of any interested party or upon his own motion, the manager of the land office at Santa Fe, New Mexico, may subject to the regulations in this part, expose to sale at public auction tracts of Choctaw-Chickasaw lands at not less than their fair market value as appraised by the authorized office of the Bureau of Land Management.

(c) The manager will cause a notice of sale to be published and posted consistent with the requirements of Subpart 2710 of this chapter. The successful purchaser of a tract will be required to reimburse the Government for the cost of publication of such notices, or if more than one successful purchaser is involved, the several purchasers will be required to pay their proportionate share of such costs determined on an acreage basis.

(d) The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice. Bids may be made by the principal or his agent, either personally at the sale or by mail. Bids sent by mail will be considered only if received at the place and prior to the hour fixed in the notice of the sale. Sealed bids must be accompanied by certified checks, post office money orders, bank drafts, or cashiers' checks for the amounts of the bids and must be enclosed in sealed envelopes which must be marked as prescribed in the notice of sale. In the event that two or more bids sent by mail are identical in amount, they will be considered in the award of the lands in the order of their receipt as shown by the hour and date noted on the envelope.

(e) At the close of bidding, owners in fee simple of lands contiguous to the offered tract, providing that they or their agents are present at the sale, will be granted a preference right of purchase by offering at the sale to meet the highest bid for such tract. In the event two or more preference claimants offer to meet the highest bid and in the absence of an agreement among them as to the award of the lands, the award will be determined through drawing.

(f) An awardee of a tract at public sale will be granted a reasonable time in which to pay the purchase price of the lands, the cost of publication, the cost of survey, if any, and the value of the improvements of the former occupant of the lands, if any, and if he is a preference claimant, to submit proof of his ownership in fee simple of lands adjoining the offered tract. Such proof must consist of (1) a certificate of the local recorder of deeds or an authorized abstracter, or (2) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at the date of the sale. After a case has been closed, the data filed pursuant to this section may be returned. In the event that the awardee does not submit within the time specified the amounts requested or the proof of ownership, the lands will be awarded under the same conditions to the drawee next in order, if any, or to the next highest bidder, if any.

(g) Lands remaining unsold after offer at public sale, for a period of one year after date of sale, will be available, at the discretion of the authorized officer of the Bureau of Land Management and at not less than the price at which they were appraised for the public sale, for purchase by the first qualified applicant who tenders to the Manager, Santa Fe Land Office, an amount equal to the

price specified by the manager, the cost of publication, and if any, the cost of survey and the value of the improvements of the former occupant.

(h) Until a cash certificate has been issued, the authorized officer may at any time determine that the lands should not be sold, and no bidder or applicant for private sale shall have any contractual or other rights as against the United States, and no action taken will create any contractual right or obligation of the United States.

§ 2781.2 Leases and permits for nonmineral resources.

(a) Unless otherwise provided for by the regulations in this part, the Choctaw-Chickasaw lands will not be subject to lease or permit for the development and use of nonmineral resources except (1) where disposal of fee title to the tract, in the discretion of the authorized officer of the Bureau of Land Management, is not in the public interest, (2) where the public interest will be served by the issuance of a lease or permit having a term of not to exceed one year, or (3) where the public interest will be served by the issuance of a lease under the regulations of Subpart 2232.

(b) Leases and permits issued under paragraph (a)(2) of this section, will be renewable in the discretion of the authorized officer of the Bureau of Land Management for periods not exceeding one year for each renewal.

(c) The authorized officer of the Bureau of Land Management, in his discretion, may specify the terms and conditions of leases and permits issued under paragraphs (a)(1) and (2) of this section consistent with the policies and procedures of the Department of the Interior.

(d) Except for applications to lease under the regulations of part 2740, no particular form of application is required. The applicant, however, must describe the lands desired and the purpose for which he desires them. Every application must be accompanied by a filing fee of $10 which will not be returnable.

§ 2781.3 Deeds; disposition of minerals.

(a) All deeds for lands disposed of under the act of August 3, 1955 (69 Stat. 445), will contain a reservation to the United States of all its rights to mineral deposits in the lands, together with the right to prospect for, mine, and remove them. Any minerals subject to the public land leasing laws so reserved to the United States may be disposed of to any qualified person under applicable laws and regulations, subject to such conditions as the authorized officer of the Bureau of Land Management deems necessary for the protection of the surface and other nonmineral values of the lands. Until rules and regulations are issued, reserved minerals other than those subject to the public land leasing laws are not subject to disposition or, except by an authorized Federal agency, to prospecting.

(b) All minerals in the Choctaw-Chickasaw lands, subject to the exception and qualifications in paragraph (a) of this section, are subject to the applicable public land mining and mineral leasing laws and the regulations thereunder (see Groups 3100 and 3800 of this chapter).

(c) Deeds for Choctaw-Chickasaw lands disposed of under the regulations in this part will contain any provision the authorized officer of the Bureau of Land Management deems necessary in order to protect the rights of the holders of existing interests in the lands, or to permit access to any of the lands in which the Federal Government retains an interest.

§ 2781.4 Disposal of materials.

Materials on the Choctaw-Chickasaw lands, other than minerals subject to disposal under the public land mining and mineral leasing laws, are subject to disposal under the regulations of Parts 3600 and 5510 of this chapter.

§ 2781.5 Rights-of-way.

Easements and permits for rights-of-way over the Choctaw-Chickasaw lands may be secured under the regulations of Group 2800.

§ 2781.6 Contributions and donations of money, services, and property.

(a) Section 6 of the act authorizes the Secretary of the Interior to accept contributions or donations of money, services, and property to further the provisions of the act.

(b) Contributions and donations may be offered to the Manager of the Land Office at Santa Fe, New Mexico.

(c) Amounts of money contributed in excess of their appropriate share of expenses as determined by the authorized officer of the Bureau of Land Management, will be refunded to contributors.

This circular replaces Circular 1956.

GPO 837-556

Circular No. 2310

REGULATIONS PERTAINING TO:

DISPOSITION; SALES

SPECIAL AREAS

43 CFR 2783

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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Subpart 2783—State Irrigation Districts

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§ 2783.03 Authority.

The act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630) empowers the Secretary of the Interior, following the presentation of proper applications, to investigate the plans and financial and physical resources of irrigation districts theretofore or thereafter organized pursuant to the law of any State, and if he shall find and conclude that any such applicant has planned and is executing an altogether meritorious and feasible irrigation undertaking, to grant his approval of its plan and undertaking, provided a majority of acreage thereof is not unentered land, to the end that upon such approval, and upon compliance by such districts with the conditions in said act specifically set forth, all unentered public land and land which has been entered, but upon which certificate has not issued, shall be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes to the same extent and upon like terms as are privately owned lands within the district. This includes the right of the district to levy and collect taxes on unpatented land for the purpose of raising funds with a view to the construction, operation, and maintenance of the irrigation system, but does not grant the right to tax generally or for any purpose not definitely connected with the construction and maintenance of the irrigation works. The right of the district to sell lands which were entered at the date of the levy of any such lawful tax or assessment remaining unpaid is also provided for, together with the right of individuals to make entry of such land after the period of redemption from tax sales has expired.

§ 2783.1 Procedures.

§ 2783.1–1 Application by a district for approval.

Any irrigation district desiring to obtain the benefits of the act of August 11, 1916, should file in the land office for the district within which the lands are situated an application, in duplicate, consisting of the following:

(a) A statement setting forth concisely the legal address of the district; the date when, by court decree or otherwise, it was finally declared to be fully organized; the name and title of all officers of the district qualified at the date of the filing of the application; the gross amount of land embraced in the district; the amount of irrigable land within the district; the amount of privately owned land within the district; the amount of entered land for which final certificate has not issued; the amount of unentered public land; the amount of land embraced within a withdrawal for a United States reclamation project; the amount of land otherwise withdrawn (within Indian, forest, power-site, or other withdrawal); how much (percent) of the project has been completed; what bond issue, if any, has been finally consummated, and the present bonded debt; whether contract has been made with the United States under the Reclamation act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), or is pending, and if any such, the date thereof; and any other facts or circumstances which would throw light on or be pertinent to a full understanding of the present condition or future prospects of the district.

(b) Proof of organization.

(c) Evidence of water right and sufficiency of available water supply.

(d) Maps showing the project.

(e) Plans and specifications.

(f) Such data as may be necessary to a full understanding of the situation.

(g) All applications by State irrigation districts for approval under the act of August 11, 1916, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2783.1–2 Proof of organization.

A properly authenticated copy in duplicate of the proceedings through which the district claims corporate existence should be filed. The character of this proof will, of course, depend upon the State statute under which the organization was effected.

§ 2783.1–3 Evidence of water right.

If the lands to be reclaimed are wholly withdrawn lands within a United States reclamation project, and the right to the use of the water depends solely upon an appropriation by the Government, no evidence of water right will be required; but if dependence is placed upon any water appropriation other than one claimed by the Government, either for the reclamation of the whole or a portion of the lands sought to be made subject to the act of August 11, 1916, certified copies of such instruments as will show title to the water rights claimed should be filed with the application. A statement as to whether the stream or other body of water from which the water supply is to be secured has been adjudicated, and if so, the court in which the decree was granted and the date thereof, should be given. If water measurements have not been taken, a detailed report showing the foundation for the belief that sufficient water exists should be filed.

§ 2783.1–4 Maps and details to be shown thereon.

(a) There should also be filed in duplicate with the application tracings showing by smallest legal subdivision, in accordance with the latest official survey, all of the lands embraced within the confines of the district; the status of the various tracts should be differentiated, by markings on each legal subdivision, in black India ink, letters corresponding to the status of the land, as follows:

(1) Privately owned land.

(2) Lands which have been entered but for which certificate has not been issued.

(3) Lands withdrawn under the Reclamation Act.

(4) Lands otherwise withdrawn.

(5) Unentered public lands.

NOTE: If a tract of land appears to come within two of the designations, both letters should be used.

(b) Unless one-eighth of any smallest legal subdivision is susceptible of reclamation from the irrigation system as planned or constructed, the district should not request its designation, except where it is shown that such irrigable area, where less than one-eighth of the subdivision, will when reclaimed be more valuable than the entire subdivision in its native state.

(c) These tracings should be made on tracing linen with India ink. Three scales are permissible: 2,000 feet to the inch, 1,000 feet to the inch, or 500 feet to the inch. No other scales should be used, and the scale most adaptable to a clear showing of the matters and things set forth thereon should be used, but in no case should any one tracing be over 36 inches in width.

(d) The tracings should also show the outlines, properly tied, of any reservoirs, canals, ditches, power plants, transmission lines, or other aids to reclamation which are included in the system as well as cross sections, properly drawn to scale, of dams and canals.

(e) If the irrigation system relied upon for the reclamation of the lands within the district is entirely a United States reclamation project, it will be unnecessary to furnish a map. See section 3 of the act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773). If, however, public lands are to be reclaimed, in whole or in part, by means other than under a United States reclamation project, such system or the portion thereof not connected with the United States reclamation project should be shown by map.

§ 2783.1–5 Plans and specifications.

(a) If the district irrigation works have been constructed, either fully or partially, plans and specifications of the principal structures, sufficient to show the designs and methods of construction, prepared by a competent engineer, should be filed together with an authenticated statement of the amount actually expended upon the construction and the estimated amount necessary to complete the system.

(b) If no construction has been undertaken, preliminary plans showing the estimated cost of the project and the salient features thereof in sufficient detail to establish the feasibility of the project will be sufficient.

§ 2783.1–6 Complete data required.

As each project must necessarily stand or fall upon its own merits, it will be impossible to specify minutely all of the data that may be required. In every instance, however, the data should be so full and complete as to place before the authorized officer all of the information necessary to an intelligent consideration of the feasibility of the project as a whole. Additional information may be required if the data stated upon the original application prove insufficient.

§ 2783.1–7 Statements and certificates on maps.

Each of the maps filed with the application for recognition should bear the certificate of the president or other presiding or chief officer of the district, countersigned by the secretary, clerk, or other recording officer and attested by the seal of the district, in accordance with Form No. 1. (See Appendix A.) They should also bear the statement of the district's chief engineer, in accordance with Form No. 2. (See Appendix A.) This certificate and statement should be inscribed upon the maps in India ink.

§ 2783.1–8 Application for right-of-way.

If any unpatented public land or any reservation of the United States is affected by any of the proposed works of the irrigation district, application for right-of-way therefor must be filed by the district under the appropriate act before the application for recognition will be finally approved.

§ 2783.2 Lands included.

§ 2783.2–1 Identification of unsurveyed lands.

Where any proposed district includes within its confines unsurveyed lands, the lines of survey nearest such unsurveyed lands will be protracted.

§ 2783.2–2 Lands in more than one land district.

Where the lands within the confines of the proposed irrigation district lie within the jurisdiction of more than one land office, it will only be necessary to file the data in duplicate in one of the land offices; a blueprint copy of the map and one copy of the statement, however, should be filed in the other land offices, together with a notice to the manager that the application, in duplicate, has been filed in the other land office (naming it).

§ 2783.3 Requirements when lands are to be claimed by Bureau of Reclamation.

(a) Section 3 of the act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773), provides as follows:

> That upon the execution of any contract between the United States and any irrigation district pursuant to this Act, the public lands included within such irrigation district when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the Act entitled "An Act to promote the reclamation of arid lands," approved August 11, 1916: *Provided,* That no map or plan as required by section 3 of the said Act need be filed by the irrigation district for approval by the Secretary of the Interior.

(b) This section is construed as an amendment of the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), in that it makes unnecessary the filing of a map or plan of the district for the approval of the Secretary of the Interior in those cases where the lands within a district are to be reclaimed by the Bureau of Reclamation under a contract between the Secretary of the Interior and the irrigation district entered into under the act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in lieu thereof provides for the designation by the terms of such contract of the public lands included in such a district where subject to entry and entered lands on which no final certificates shall have been issued, such designation to make the land subject to all the provisions of the act of August 11, 1916.

(c) Accordingly it will not be necessary for a district, under such circumstances, to file formal application for the designation of the land, as provided for in the act of August 11, 1916, but in connection with its negotiations with the Secretary of the Interior for the construction of the irrigation system or for repayment of cost if already constructed, it should make request for the designation of the lands under the act of August 11, 1916, filing a list thereof.

(d) In such a case the contract between the Secretary of the Interior and the irrigation district must contain a description according to the approved plats of survey of the lands within such district, properly subject to designation under said act of August 11, 1916, and the approval of such a contract by the Secretary unless otherwise stipulated, will have the effect of designating the lands as provided for in said act and making them subject to all the provisions thereof.

(e) The Bureau of Reclamation will require the district to present a list of the land which it desires to have designated under the act of August 11, 1916. From this list the Bureau of Reclamation will eliminate tracts which for any reason will not be irrigated (at least to such an extent as to make the irrigable portion more valuable than the whole tract when unreclaimed) by the system as constructed or to be constructed.

(f) These lists should then be referred by the Bureau of Reclamation to the Bureau of Land Management with a view to the elimination of any lands not subject to entry, whereupon the remaining tracts will be included in the contract between the district and the Secretary of the Interior.

(g) The Commissioner of the Bureau of Reclamation will furnish the Director of the Bureau of Land Management with two copies of all such contracts, together with two blue-print maps of the district.

§ 2783.4 Taxes and assessments.

(a) Where an irrigation district has been approved by the Secretary of the Interior the district must, after each assessment, file with the manager of the land office for the district within which the lands of the irrigation district are situated, an officially certified list showing the amount assessed against each smallest legal subdivision of unentered or entered and unpatented public land within the district, which list shall contain a statement that such assessment was made in due form in compliance with the provisions of the State law and of this act. Any assessment or sale, or attempted sale, of such lands prior to the approval of the district is without authority of law and void.

(b) Where contracts made between the United States and irrigation districts involving public lands of the United States inhibit the assessment of unentered public land while in that status, the provisions of such contracts must, of course, be complied with by the district.

§ 2783.5 Status of lands.

§ 2783.5–1 Status of lands within approved irrigation districts.

(a) For the purpose of entry, the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), may be considered as dividing the unpatented lands within a State irrigation district into two general classes, namely, lands withdrawn under the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), and lands not so withdrawn.

(b) For the purpose of administration the lands within such a district may be considered as divided into the following subordinate classes:

(1) Unpatented public lands when subject to entry.

(2) Entered unpatented lands.

(3) Entered lands which shall become vacant by relinquishment or cancellation for any cause.

(c) The approval of a legally organized irrigation district by the Secretary of the Interior under said acts, unless otherwise provided by contract between the district and the United States, makes the public lands within such district, when subject to entry, and the entered lands on which no final certificates have issued, subject to a lien for all taxes and assessments thereafter lawfully levied by the district to the same extent and in the same manner as lands of a like character held under private ownership.

§ 2783.5–2 Entries under the Reclamation Act.

(a) Lands within an approved irrigation district withdrawn under the act of June 17, 1902 (32 Stat. 388), shall during the continuance of such withdrawal be subject to entry only in the manner provided by said act, and amendments thereto and the regulations thereunder.

(b) When lands included in entries made under the act of June 17, 1902, are sold for nonpayment of district taxes or assessments the purchaser on the presentation of proper evidence of his tax title shall be considered as one holding a complete and valid assignment under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), and shall perfect the entry in the same manner required of an assignee under said act.

(c) The evidence of such tax title shall be the same as hereinafter provided in the case of an applicant under tax title for land not subject to the Reclamation Act.

§ 2783.5–3 Entry of lands unentered when tax or assessment was levied; section 5, act of August 11, 1916.

(a) Public lands within an approved irrigation district which were unentered at the time any tax or assessment was levied against same shall not be sold for such tax or assessment, but same shall be and continue a lien upon such land, and not more than 160 acres of such land shall be entered by any one person, and when such land shall be applied for after the approval of the district by the Secretary of the Interior, under the homestead or desert-land laws, the applicant shall be required to present a certificate from the proper district or county officer showing that no unpaid district charges are due, or delinquent, against said land.

(b) Any such application for lands of this character, if unaccompanied by the required certificate, will be suspended for 30 days to enable the applicant to present such certificate, and if not furnished, the application will be rejected, subject to the right of appeal.

§ 2783.6 When tax title will not be recognized.

No application to enter or purchase land within an approved irrigation district under tax-sale title will be allowed if the sale was for taxes or assessments levied prior to the approval of the district by the Secretary of the Interior.

§ 2783.7 Reentry of land covered by canceled entries; section 6, act of August 11, 1916.

(a) In case where any tract of entered land within an approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall, in addition to the qualifications and requirements otherwise provided, be required to furnish satisfactory proof by certificate from the proper district or county officer showing that he has paid all charges due to the district upon said land, and also that he has paid to the proper district or county officer for the holder, or holders, of any tax certificate, delinquency certificate, or other proper evidence of tax sale, the amount for which said land was sold at tax sale, together with the interest and penalties thereon provided by law.

(b) Entries for such land will be limited to 160 acres, as such lands come within the general description of "unentered" lands.

(c) It will be observed that as to such land the requirement as to payment of taxes, assessments, interest, and penalties applies to any subsequent applicant therefor and not solely to applicants under the homestead and desert-land law as in the first instance.

(d) If the application is not accompanied by this evidence the manager will suspend same for 30 days, and if the necessary proof of the required payments is not made within such time he will reject the application, subject to the right of appeal.

§ 2783.8 Cash entries; section 6, act of August 11, 1916.

(a) In case of entered lands within an approved irrigation district not subject to the Reclamation Act of June 17, 1902 (32 Stat. 388), the purchaser thereof at tax sale, or his assignee (no redemption having been made), may receive patent to the land upon the payment to the manager of the land office of the minimum price of $1.25 per acre, or such other price as may be fixed by law for such land, together with the usual fees and commissions charged in

entries of like land under the homestead laws, and upon satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land.

(b) However, such purchaser or his assignee shall at the time of application for patent have the qualifications of either a homestead or desert-land entryman, and not more than 160 acres of such land shall be patented to any one purchaser.

(c) If the purchaser at tax sale, or his assignee, shall not within 90 days after the time for redemption has expired pay to the proper manager all fees and commissions and the purchase price to which the United States shall be entitled, as provided in this act, any person having the qualifications mentioned may pay to the proper manager for not more than 160 acres of such land the unpaid purchase price, fees, and commissions to which the United States may be entitled, and upon satisfactory proof that he has paid to the purchaser at tax sale, or to his assignee, or to the proper officer of the district for such purchaser, or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges, or bid in by the district at such sale. and in addition thereto the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

§ 2783.9 Application to purchase.

(a) An application to purchase under the act of August 11, 1916, and the proofs required therewith must be signed by the applicant but need not be under oath.

(b) The application shall contain a description according to the approved plats of survey of the land sought to be purchased and shall give the serial number or numbers of the entry or entries in which the land is then included. The applicant shall also show by like evidence required in such cases that he has the qualifications of a homestead or desert-land entryman, furnishing the proof thereof.

(c) He must show whether he is applying as purchaser at tax sale, as assignee of such purchaser, or is seeking to be subrogated to the right of such purchaser or assignee.

(d) The application shall not embrace less than a legal subdivision or more than 160 acres and shall not include land in more than one land district and shall be accompanied by the usual fees and commissions provided in entries of like land under the homestead laws, together with the purchase price of the land, not less than $1.25 per acre, or such other price as may be fixed by law for such land.

(e) As the laws governing the sale of lands for taxes are not the same in the several States affected by this act, and as in some instances more than one method of conducting sales is permitted, and as the period in which redemption may be made varies, it is not thought advisable to formulate specific rules governing proof of tax titles. However, the following general rules must be observed:

(1) If the tax title is based on court proceedings a copy of the decree or order of the court under the seal of the clerk of the court must be furnished. The certificate of the clerk of court should make specific reference to the laws governing such sale and show that the period of redemption has expired without redemption having been made, citing the statute.

(2) If the sale was made by the district or under other than court proceedings the certificate of the officer conducting such sale, under the seal of his office, must be furnished. This certificate should show that all steps necessary to legalize such sale were taken, citing the statutes, and should show that the period of redemption has expired without redemption being made.

(3) No application to purchase under this act will be accepted for lands included in more than one pending entry unless necessary in order to make the 160 acres maximum area to which the applicant may be entitled, but in such event the land applied for must, if practicable, be contiguous, and if not contiguous, as nearly so as the circumstances will permit.

(4) If the application is not complete in substance, or based on an unredeemable tax title, the manager will hold same for rejection, subject to the usual right of appeal. If the application is found satisfactory and complete in all respects he will notify the entryman or entrymen, of the land affected and alleged to have been sold at tax sale, of the filing of the application to purchase such land, and that because thereof the entry, or entries are held for cancellation (to the extent affected by such sale) subject to the usual right of appeal.

(5) If the application is without objection and contains the evidence herein required and water has been made available for the land, certificate will be issued by the manager. If an appeal is filed, the same will be considered and disposed of in the usual manner.

(6) If all be found regular and sufficient, except that the irrigation works have not been constructed and water has not been made available, the certificate will be withheld pending proof of construction and of the availability of water.

(7) When the application to purchase is approved, and, without regard to whether or not such purchaser shall then be entitled to certificate and patent (which will depend upon the question of construction of irrigation works and the availability of water), the conflicting entry, or entries, as the case may be, to the extent to which the land was sold for delinquent taxes or assessments, no appeal having been filed, will be canceled of record.

APPENDIX A

FORM 1

I, ----------, the duly elected, qualified, and acting ---------- (designation of office) of the ---------- irrigation district, duly organized under the laws of the State

of ---------- as found at page ------ of ----------,[1] do hereby certify that the plan of irrigation and survey herewith is submitted under authority of the said district granted by resolution of the board of directors (or trustees) of said district, adopted on the ------ day of ----------, 19--, a copy of which said resolution, duly verified by the secretary of said district, is submitted with, and by this reference made a part of, this certificate; and application is hereby made for the designation, under the act of August 11, 1916 (39 Stat. 506), of the tracts marked hereon "b" or "e"; that the said tracts are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States and that the majority acreage in the said irrigation district is not unentered land.

(Name)

(Official title)

Of the ---------- *Irrigation District.*

Attest:
[SEAL]

(*Secretary (or other title of recording officer)*

FORM 2

STATE OF ----------
County of ----------, *ss:*

----------, being duly sworn, says that he is the chief engineer of the ---------- irrigation district; that the tracts shown hereon to be designated under the act of August 11, 1916 (39 Stat. 506), are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States;[2] that he has personally examined the same; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor, within such limits, any placer, nor cement, gravel, salt spring, or deposit of salt, nor any other valuable mineral deposit (if necessary insert: except mineral deposits within the purview of the acts of March 3, 1909 (35 Stat. 844), and June 22, 1910 (36 Stat. 583), or of the act of July 17, 1914 (38 Stat. 509), as the facts may warrant); that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land (exception as above if necessary); that none of the unentered lands contain springs or water holes (see withdrawal of April 17, 1926, also Circular No. 1066. approved May 25, 1926, 51 L.D. 457); that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, as is shown in the accompanying report; that at least one-eighth of each smallest legal subdivision for which designation is sought is susceptible of reclamation from the irrigation system or (where less than one-eighth the irrigable portion of such tract) will be of more value when reclaimed than the entire tract in its native state; that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes; and that the limits of said irrigation district are correctly shown hereon.

Subscribed and sworn to before me this ------ day of ----------, 19—.

[SEAL] ----------,
(Notary Public)

My commission expires ----------.

[1] Give citation to act or acts under which the district is organized.

[2] If the chief engineer has not made a personal examination of the land sufficiently in detail to enable him to make that part of the affidavit bracketed, it should be omitted herefrom and a separate affidavit should be made on the map as to such facts by some person who has made such examination.

GPO 837-557

Circular No. 2311

REGULATION PERTAINING TO:

USE; LEASES AND PERMITS

AIRPORT LEASES

43 CFR 2911

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

REPRINT - AUGUST 16, 1971

PART 2910—LEASES

Subpart 2911—Airport

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2911.0–8 Lands which may be leased.
2911.1 Nature of interest and terms.
2911.1–1 Prior valid rights.
2911.1–2 Terms and conditions.
2911.1–3 Beacon lights.
2911.2 Procedures.
2911.2–1 Applications.
2911.2–2 Report by Administrator, Federal Aviation Administration, execution of lease.
2911.2–3 Segregation of lands.

Subpart 2911—Airport

§ 2911.0–3 Authority.

The act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211–214), as amended by the act of August 16, 1941 (55 Stat. 621), authorizes the Secretary of the Interior in his discretion and under such regulations as he may prescribe, to lease for use as a public airport, any contiguous, unreserved and unappropriated public lands, not to exceed 2,560 acres in area. It also authorizes him to grant permission for the establishment of beacon lights and other air navigation facilities, except terminal airports, upon unreserved and unappropriated public lands and to withdraw such lands for such purposes.

§ 2911.0–8 Lands which may be leased.

Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the act of May 24, 1928.

§ 2911.1 Nature of interest and terms.

§ 2911.1–1 Prior valid rights.

All leases will be subject to valid existing rights initiated prior to the date the application for lease is filed.

§ 2911.1–2 Terms and conditions.

(a) *Report by lessee.* The lessee shall, within 6 months from the date of the lease, equip the airport as required by the Administrator, Federal Aviation Agency, and file a report thereof in the land office.

(b) *Inspection by Federal Aviation Agency; report.* At any time during the term of the lease the Administrator, Federal Aviation Agency, may have an inspection made of the airport, and if it does not comply with the ratings set by the Federal Aviation Agency that fact, with a statement as to wherein it fails, will be referred to the Bureau of Land Management for appropriate action.

(c) *Cancellation of lease.* The authorized officer may, in his discretion, cancel a lease issued under the act of May 24, 1928, for any of the following reasons: If the lessee fails to use the leased premises or any part thereof, or uses it or any part thereof for a purpose foreign to the proper use, or shall fail to pay the annual rental or any part thereof, or shall fail to maintain the premises according to the ratings set by the Federal Aviation Agency, or shall fail to comply with the regulations in this part or the terms of the lease.

(d) *Period of lease; renewal.* Leases under the act of May 24, 1928, shall be for a period not to exceed 20 years and may be renewed for like period.

(e) *Annual rental.* Every lessee under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211–214), as amended August 16, 1941 (55 Stat. 621), shall pay to the lessor an annual rental of not less than $10 for an area not exceeding 640 acres, and not less than $5 for each additional 640 acres or fraction thereof. The rental terms of each lease shall be subject to reconsideration and revision at 3-year intervals. The lessee shall be required to submit a report to the Bureau of Land Management, showing the facts as to the gross receipts within 90 days after each anniversary date of the lease. In the event the average annual gross receipts reported during any such interval from operations on the leased land, from all sources, exceed $5,000, the rentals for the succeeding interval or intervals may be increased to such reasonable amount as may be fixed by the authorized officer, but not exceeding 1 percent of such average. Due consideration will be given in fixing the rentals to all pertinent facts and circumstances, including other holdings of the lessee, if any, in connection with which the receipts are obtained. The first annual rental payment shall be made when the application is filed in the land office. All subsequent payments shall be paid in advance on or before the anniversary date of the lease.

(f) *Use of airport by Government departments and agencies; control for military purposes.* The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and with the approval of the Bureau of Land Management, any departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airports.

(g) *Regulations governing use of the airport.* The lessee will submit to the Administrator, Federal Aviation Agency, for his approval, regulations to govern the use of the airport.

§ 2911.1–3 Beacon lights.

Government department and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the rules and regulations prescribed in § 2911.1–2. However, no rental will be charged. Lands for beacon lights and other navigation facilities may be withdrawn in accordance with the provisions of Group 2300 and Subpart 2317 of this chapter.

§ 2911.2 Procedures.

§ 2911.2–1 Applications.

(a) Applications under the Act may be made by: Any citizen of the United States; any group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; any State or any political subdivision or instrumentality thereof, including counties and municipalities.

(b) No specific form of application is required.

(c) Each application must clearly describe the land applied for, must be signed by the applicant or by a duly authorized agent or officer.

(d) Each application must be accompanied by a non-refundable service fee of $10. However, no service fee will be required from a State of political subdivision or instrumentality thereof.

§ 2911.2–2 Report by Administrator, Federal Aviation Administration; execution of lease.

Upon receipt of the application one copy will be referred to the Administrator, Federal Aviation Agency, for consideration as to what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that department. After the Administrator, Federal Aviation Agency, has reported, a lease on a form approved by the Director will be prepared and sent to the applicant for execution.

§ 2911.2–3 Segregation of lands.

The filing in the proper land office of an application for a lease of lands under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, shall segregate the lands described in the application from all appropriation.

This Circular replaces Circular No. 2235.

GPO 837-607

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular No. 2312]

PART 2720—PUBLIC SALE-PUBLIC LAND SALE ACT

Expiration of Authority

Part 2720 of Chapter II, Title 43 of the Code of Federal Regulations is deleted in its entirety.

W. T. PECORA,
Acting Secretary of the Interior.

AUGUST 24, 1971.

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Circular Distribution List

GPO 837-709

Circular No. 2313

GRAZING REGULATIONS FOR THE PUBLIC LANDS

U. S. DEPARTMENT OF THE INTERIOR
Rogers C. B. Morton, *Secretary*

BUREAU OF LAND MANAGEMENT
Burton W. Silcock, *Director*

Reprint - August 1971

PREFACE

The regulations contained herein are applicable to the management and use of 175,000,000 acres of public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, and the O&C Act of August 28, 1937, as amended and supplemented.

Part 4110, Grazing Administration (Inside Grazing Districts) is applicable to the 157,000,000 acres of grazing land administered by the Bureau of Land Management's 52 grazing districts. It provides the regulations pursuant to Section 3 of the Taylor Grazing Act for management of the public lands.

Part 4120, Grazing Administration (Outside Grazing Districts and exclusive of Alaska), provides regulations (pursuant to Section 15 of the Taylor Grazing Act and Section 4 of the O&C Act) for the use and management of the 18,000,000 acres of leased lands that have not been included within grazing districts.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subparts 1840 and 1850, Appeals and Hearings procedures, have been recodified under Part 4 of this Title and are not included in this publication. Appeals and Hearings procedures under Part 4 which are applicable to all Bureau of Land Management operations will be issued as a separate circular.

This publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

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Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) "Board of Land Appeals" means the Board in the Office of Hearings and Appeals, Office of the Secretary, authorized to decide finally for the Department appeals to the Secretary arising under this part.

(e) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(f) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(g) "District manager" means the supervising Bureau of Land Management officer of the grazing district in which the particular range lies, or his auhorized agent.

(h) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(i) "Property" means privately owned or controlled land or water used in range livestock operations.

(j) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(k) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(l) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(m)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property,

to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(n) "Land dependent by location means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(o) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(p) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(q) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(r) (1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(s) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(t) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (paragraph (m)(1) of this section) or water (paragraph (r)(1) of this section) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner or the Board of Land Appeals upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

(u) "Allotment management plan" means a program of action designed to reach specific management goals.

(v) "Grazing system" means a specific sequence of livestock grazing by designated area to accomplish management objectives.

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if:

(a) He is engaged in the livestock business and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or:

(b) It is a group, or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all the members of which are qualified under paragraph (a) of this section; provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or:

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised; provided that the articles of incorporation have been approved by the State Director.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements: classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increases.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 Reductions.

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the

long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with Parts 2450 and 2460 of this chapter, and subject to the right of protest and to the exercise of administrative review by the Secretary as may be provided in such notice and in Group 2400 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided*, That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Whenever the grazing capacity on Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case

may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3.

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–2 (c) and (d).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under §§ 4111.4–3 (a)(3) and (c), and 9239.3–2(e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13)(i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing season.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license, permit, or approved allotment management plan, may, upon a written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Board of Land Appeals, in accordance with Department Hearings and Appeals Procedures contained in Part 4 of this title.

(k) *Fees, payments and refunds*—(1) *Fees.* (i) Fees will be charged for the grazing of all livestock on public lands at a rate per animal unit month, except that no fee will be charged for a free-use license. Fees for any fee year, consisting of a grazing fee for use of the range and a range improvement fee, will be published as a notice in the FEDERAL REGISTER.

(ii) Fees will be established by the Secretary in nine equal annual increments, effective with the fee year beginning March 1, 1971, to attain the fair market value of range forage at the 1979 fee year. Fair market value is that value established by the Western Livestock Grazing Survey of 1966 or as determined by a similar study which may be conducted periodically to update the fee base, if deemed necessary. Annual adjustments may also be made for any of the 1970–79 fee years, and thereafter, to reflect current market values.

(iii) A minimum annual charge of $10 will be made on all regular licenses, permits, nonrenewable licenses, and crossing permits, except as specified in subdivision (vi) of this subparagraph.

(iv) Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management and any State or Federal agency, or any person, association, corporation, or otherwise.

(v) All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued, or for which an allotment management plan has been approved. No fees will be charged for livestock under 6 months of age.

(vi) Upon application filed with the District Manager, by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued. Charges are payable in advance at the same rate charged for regular grazing use, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(2) *Payment of fees.* (i) No regular license or permit shall be issued or renewed until payment of all fees due the United States under these regulations have been made. Grazing privileges may be canceled or reduced, in accordance with paragraph (d) of this section, for failure to pay the required fees. Fees for regular licenses and permits are due the United States upon issuance of a fee notice and are payable in full in advance before grazing use is authorized; except that where grazing is authorized on the basis of an approved allotment management plan, which includes grazing system requirements necessary to assure proper management of the public land and its resources, the District Manager may either:

(*a*) Issue a fee notice upon termination of the grazing period authorized. The fee notice will reflect the actual grazing use made and will be payable within 30 days of the date of issuance, or

(*b*) Issue a fee notice on the basis of the normal operation detailed in the allotment management plan. Such fees are due the United States upon issuance and are payable in full in advance before grazing use is authorized. At the conclusion of the authorized grazing period the actual grazing use will be determined. A supplemental billing reflecting additional use must be paid within 30 days of issuance. A refund or credit may be made toward the following year's fees for use less than the normal operation. Ordinarily, no adjustment will be made when the amount is under $5.

(ii) Any licensee or permittee who desires a change in grazing use authorized pursuant to any of the provisions of this section must file, in advance, a written request for such change, except when in conformance with an approved allotment management plan. Upon approval of change, an adjusted billing notice will be issued.

(3) *Refunds.* No refund will be made for failure to use all grazing privileges represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease during the life of a regular license or permit, fees due may be reduced in whole or in part, credited or refunded; or fee payment may be postponed for such periods so long as the emergency exists.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall

be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 4.470 of this title. The conduct of hearings is provided for in §§ 4.471 through 4.475 of this title. Appeals from the Examiner's decision may be made to the Board of Land Appeals pursuant to 4.476 of this title and in accordance with Department Hearings and Appeals Procedures contained in Part 4 of this title.

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(b) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Board of Land Appeals, in accordance with Department Hearings and Appeals Procedures contained in Part 4 of this title.

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

§ 9239.3–2 **Inside grazing districts.**

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the District manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the District manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the District manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the District manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the District manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the

United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the District manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c)(2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the District manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Board of Land Appeals of any matter under this § 9239.3–2, shall be made in accordance with § 4.470 and Department Hearings and Appeals Procedures contained in Part 4 of this title.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

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Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

§ 4120.1 Authority.

(a) Section 15 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1275, as amended, 43 U.S.C. 315m) vests discretionary authority in the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands in the continental United States, exclusive of Alaska, which are not within established grazing districts.

(b) Section 4 of the O&C Act of August 28, 1937 (50 Stat. 875; 43 U.S.C. 1181d) vests in the Secretary of the Interior discretionary authority to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereafter referred to as O&C lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the Act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

(c) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986 as amended; 43 U.S.C. 1411–1418) expressly authorizes the Secretary of the Interior to determine which of the lands exclusively administered by him through the Bureau of Land Management are suitable for retention and management under the principles of multiple use and sustained yield. Section 5 of the Act (78 Stat. 987; 43 U.S.C. 1415) defines multiple use and sustained yield.

§ 4120.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized agent.

(b) "Director" means the Director of the Bureau of Land Management or his authorized agent.

(c) "State Director" means the supervisory Bureau of Land Management official for the state in which the particular range lies, or his authorized agent.

(d) "Authorized Officer" means the Bureau of Land Management District Manager or Area Manager, to whom has been delegated the authority to take action.

(e) "District Office" means the Office of the Bureau of Land Management having direct management responsibility and administrative jurisdiction over the specific public lands involved.

(f) "Animal unit month" means the amount of forage necessary for the sustenance of one cow, or its equivalent for a period of 1 month.

(g) "Grazing capacity" means the total animal unit months of forage available from a tract or tracts of forage land during a given period.

(h) "Management area" means a designated tract or geographic area of land capable of being properly managed as a unit for multiple-use to ensure a sustained yield of forage without jeopardy to other resources or uses of the land. Such a management area may require joint use by two or more lessees.

(i) "Allotment management plan" means a program of action designed to reach specific management goals.

(j) "Grazing system" means a specified sequence of livestock grazing by designated area to accomplish management objectives.

(k) "Preference land" means the privately owned or controlled land upon which the issuance of a grazing lease is based.

(l) "Contiguous land" means land that borders upon or touches upon public land.

Subpart 4121—Awards of Grazing Leases

§ 4121.1 Qualifications of applicants.

§ 4121.1–1 Minimum qualification requirements.

An applicant for a grazing lease is qualified if:

(a) He is a person engaged in the livestock business, has a need for the grazing use of the land, and is a citizen of the United States or;

(b) It is a group or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all members of which are qualified under paragraph (a) of this section, provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or;

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised: *Provided,* That the articles of incorporation have been approved by the Authorized Officer.

§ 4121.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in preference land by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding lease, or preclude the renewal of a lease based upon such land, for a period of 2 years after such acquisition. Upon the failure of such person to qualify within the 2-year period, the lease will be subject to cancellation in accordance with § 4125.1–1(h).

§ 4121.2 Adjudication of applications for grazing leases.

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land resource consideration.* The Authorized Officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, and other multiple uses.

(b) *Grazing capacity, seasons of use, and maximum annual period of use.* The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the leased land therein during any one year, except that where the leased land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, the Authorized Officer may establish the grazing capacity only.

(c) *Applicants.* Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. When the public land consists of an isolated or disconnected tract embracing 760 acres or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, upon terms and conditions prescribed by the Secretary: *Provided,* That the preference right must be asserted during a period of 90 days after such tract is offered for lease.

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

(d) *Conflicting applications.* (1) When more than one qualified applicant applies for the same public land and it appears that a division of the area may be made and will not result in improper land use, the Authorized Officer will allow the applicants an opportunity, within a specified time limit which he shall set, to agree to a division of the lands. A division of the lands may be made either by agreement between the conflicting applicants which is acceptable to the Authorized Officer, or by determination of the Authorized Officer where no acceptable agreement is reached. However, where it appears that a division of the land would result in improper land use, or where proper land use management will be advanced thereby, the Authorized Officer may require that joint use be made of the management area.

(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application[1] (where access is not presently available), and (vii) other land use requirements.

[1] Where the United States obtains such a right-of-way, it will assume responsibility therefor to the full extent authorized by law.

§ 4121.2–2 Leases of withdrawn or reserved lands, preference right leases for lands restored from withdrawal.

(a) The Authorized Officer may issue grazing leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is consistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with subpart 2311 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the Authorized Officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored public lands previously used by him. The preference right must be asserted by an application for a grazing lease (see § 4125.1–1(a)(1)), and must be filed within 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior grazing lease, license, permit or other authority upon which the superior preference claim is based.

§ 4121.3 Adjustments of grazing use.

§ 4121.3–2 Increases.

Increases in grazing capacity, when determined by the Authorized Officer, will be apportioned in a manner that will assist in the stabilization of the livestock operations after consideration of other land uses.

§ 4121.3–3 Decreases.

(a) Downward adjustments in authorized grazing use may be imposed during the term of a grazing lease where, for example, the lease erroneously includes lands not subject to lease, or authorizes use in excess of the grazing capacity of the leased land, or where a downward adjustment is required to facilitate other proper multiple uses on the area, or similar situations.

[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of Feb. 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, Act of Dec. 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the cooperative agreement of Feb. 28, 1945, will upon restoration from the reclamation withdrawal, become subject to the provisions of paragraph (b) of this section.

(b) Adjustments to balance authorized use with the proper stocking rate of the management area will be apportioned equitably or as agreed to among the lessees and the Authorized Officer. Such adjustments may be made by authorizing fewer livestock, or a shorter grazing season, or by both methods as determined by the Authorized Officer.

(c) The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any leased area. The notice will state the manner in which the adjustment is to be made and will inform the lessee of his right of appeal in accordance with **Part 4 of this title.** If no appeal is filed within the time allowed, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the grazing season immediately following the effective date of the decision.

(d) Public lands under a grazing lease issued pursuant to this part are subject to classification, withdrawal, or other disposal under the Taylor Grazing Act, the O&C Act, or other applicable public land laws. Reasonable notice of a pending or proposed classification, withdrawal or disposal which might result in a diminution of the area of the leased land will be given to the lessee.

Subpart 4122—Management Practices

§ 4122.1 Management considerations.

§ 4122.1–1 Multiple use.

All use and management practices, include grazing and the issuance of grazing leases, shall be in conformance with the concepts of multiple use and sustained yield (see 43 CFR 2400.0–5 (o) and (p)). Any public lands leased under the regulations of this part which are suitable for multiple use shall be managed for multiple use to the fullest extent possible, including provision of adequate access for the various multiple users. The Authorized Officer will negotiate for such access with the appropriate applicant(s) or lessee(s), utilizing Department of the Interior easement or acquisition procedures. Should negotiations prove ineffective, the United States will acquire the necessary access by appropriate legal procedures.

§ 4122.1–2 Areas of limited multiple use values.

On areas of public land with limited multiple use values the Authorized Officer may issue leases based on grazing capacity of the area only, or may include livestock numbers and season and time of use. Grazing leases based on the

criteria of this section are usually for isolated and fragmented tracts of public land. However, the multiple use values involved, not size of the public land area, will be the determining factor.

§ 4122.1–3 Areas of important multiple use values.

(a) On areas of public land with important multiple use values in addition to livestock grazing or where the primary use is for sustained livestock grazing, the Authorized Officer may, before the grazing lease is issued, or where an existing lease provides for the issuance of an allotment management plan, develop in cooperation with the lease applicant or lessee an allotment management plan. Such plan shall be incorporated into the lease as a part of the terms and conditions of the lease. The plan shall provide for the proper use and conservation of the public lands, at the same time providing for the lessee the maximum possible operations flexibility. The management plan will identify objectives for the allotment, a grazing system and procedures for evaluation of management.

(b) In the absence of mutual agreement between the lessee and the Authorized Officer on an allotment management plan, the Authorized Officer may, in lieu of such plan, stipulate as a condition of the lease grazing system requirements necessary to assure proper management of the public land and its resources. In such cases the Authorized Officer may issue short-term leases until such time as he determines that the grazing system requirements are adequate to assure proper multiple use management of the public land.

§ 4122.2 Designations of grazing areas for exclusive use by specified classes of animals.

When necessary for the proper use or orderly administration of a lease area, the Authorized Officer may designate certain areas for use exclusively by a certain kind or class of livestock or wildlife.

§ 4122.3 General rules of the range.

The acts prohibited and rules of fair range practice as detailed in § 4112.3–1 and § 4112.3–2 of this chapter shall apply to all leases issued under the regulations in Part 4120.

Subpart 4123—Supervision and Inspection

§ 4123.1 Procedures for enforcement of rules and regulations.

A grazing lease may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the grazing lease, or for a violation of the Taylor Grazing Act or of the O&C Act or of any of the provisions of this Part. (See § 9239.3–1 of this chapter for detailed regulations). The lease of public lands for livestock grazing under these regulations in no way limits the Bureau's authority to protect the lands against unauthorized use or occupancy.

Subpart 4124—Local Associations

§ 4124.1 Local associations of stockmen.

Grazing associations formed by lessees will be recognized in accordance with regulations detailed in § 4114.4.

Subpart 4125—Records and Administrative Procedures

§ 4125.1 Procedures.

§ 4125.1–1 Leasing procedures; requirements and conditions.

(a) *Filing and action on lease applications.* (1) An application for a grazing lease shall be executed on a form approved by the Director and filed in the District Office of the Bureau of Land Management having management responsibility over the public lands applied for in the application. Proof of ownership or control of contiguous lands may be required by the Authorized Officer where the applicant seeks to assert a preference right.

(2) A service fee of $10 will be charged for all applications to lease public lands including initial applications and those made pursuant to assignments and consolidations. However, no fee will be charged for consolidations requested by the Authorized Officer or for a regular renewal of an existing lease.

(3) Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the Authorized Officer as not timely filed. Applications for lands not under lease may be filed at any time.

(4) A timely filed application for renewal of an existing grazing lease does not confer on the lessee any right to a renewal but will authorize the continued grazing use of the lands by the lessee in accordance with the provisions of the existing lease pending final action on the application for renewal. The fee for such extended use shall be consistent with the then current fee schedule.

(5) An application for a grazing lease must describe the lands applied for by one of the following methods: (i) By legal subdivisions, or (ii) by metes and bounds description, or (iii) by designated management area.

(6) An application for a grazing lease may include O&C lands or public lands or combinations thereof.

(b) *No right is conferred by application prior to lease.* Since the issuance of a grazing lease is discretionary, the filing of an application for lands not then under lease does not create any right in the applicant to use the lands applied for pending the issuance of a grazing lease.

(c) *Action on defective and nonallowable applications.* (1) The Authorized Officer may require any defects in an application be corrected or additional information to be furnished. The Authorized Officer may reject any application if the applicant fails to correct defects in the application or fails to provide the additional information within the time allowed, which period shall not be less than fifteen (15) days from the date of receipt by the applicant of notice of such defects or required information.

(2) The Authorized Officer shall reject the application if the land applied for (i) is in an allowed entry, (ii) is otherwise appropriated or reserved and not subject to lease under the Taylor Grazing Act or the O&C Act, (iii) is not public land, (iv) is under existing grazing lease, or (v) is of such character that livestock grazing would be detrimental to the resources or other uses of the land.

(d) *Consolidations.* A consolidation of leases held by a lessee may be requested by the lessee on a renewal application or may be required by the Authorized Officer on his own motion. The term of the consolidated lease shall be determined through negotiation between the lessee and the Authorized Officer.

(e) *Protests and appeals*—(1) *Protests.* A protest against the approval of an application for a lease should be filed in the same office where the application for a grazing lease was filed; it should describe the lands involved, contain a complete disclosure of all facts upon which the protest is based, and be accompanied by evidence of service on the applicant of a copy of the protest. The Authorized Officer will consider the protest, and will serve a copy of his decision on the affected parties in person or by certified mail, and will advise the protestant and other parties of their right to appeal.

(2) *Appeal by applicant.* The lease will be executed by the Authorized Officer and transmitted to the lessee only after final action is taken on any protest or appeal which may have been filed. The applicant's signature to the lease shall constitute his acceptance of the lease as executed by the Authorized Officer. Nonacceptance of the lease does not prejudice the applicant's right to appeal.

(f) *Additional requirements and stipulations.* In addition to the provisions set forth in the standard Grazing Lease Form, the lease will provide for the multiple use requirements of the area, the number of livestock to be grazed, proper grazing seasons, allotment management plan, grazing system, reservation for authorized trailing, and any other conditions or requirements which the Authorized Officer may deem necessary and proper, except as provided under §§ 4121.2–1(b), 4122.1–2, and 4122.1–3.

(g) *Subleases.* No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

(h) *Cancellation or reduction of leases; show cause.* Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations, or in any case that a lease confers use in excess of that properly allowable. In any such case the Authorized Officer will notify the lessee that the lease is being held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not be taken. The notice will fully set forth the reasons for the proposed action, specifically referring to the pertinent provisions of the regulations, and will be served on the lessee personally or by certified mail. The Authorized Officer will consider any cause shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee personally or by certified mail that the lease has been cancelled or reduced as the case may be. Such decision is subject to appeal.

(i) *Terms and conditions.* The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

(1) A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with § 4121.2–1(b).

(2) Grazing leases will provide for the grazing of livestock on the leased land only during that part or parts of the year for which the area has been classified as proper for use, except as provided in § 4121.2–1(b).

(3) Upon the diminution of the public land used under any grazing lease due to withdrawal, appropriation, selection, or otherwise, the lease will be adjusted proportionately to the reduced grazing capacity and the grazing fee will be adjusted accordingly commencing with the ensuing lease year.

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

(5) The area of the leased land may be reduced if it is determined that the land is required for the protection of forest plantations or sources of community water supply; or for recreation facilities, wildlife habitat, stock driveways, roads, trails, townsites; or for other public purposes. When it is determined by the Authorized Officer that the leased land is excessive to the lessee's need or that the lessee is not making substantial use of the leased land, the Authorized Officer may cancel the lease, reduce the acreage of the grazing lease, or reduce the grazing use allowed in accordance with the provisions of § 4125.1–1(h). In the case of any such acreage reduction a proportionate fee adjustment will be made. If the entire grazing lease is cancelled, the Director may refund any portion of the grazing fees paid for the cancelled lease term.

(6) The Authorized Officer may establish the size and boundaries of a grazing lease area to facilitate the proper and effective management of the resources. In so doing, he will give consideration to seasons of use, topography, and establishment of systems of grazing and any other pertinent factors. He may determine that two or more applicants shall be authorized to use the public land within a management area.

(7) The Authorized Officer may make adjustments in grazing leases at any time when necessary to comply with these regulations for the public lands.

(8) If necessary to rehabilitate the vegetative resources on the public land, the Authorized Officer may temporarily close the leased land to grazing or reduce livestock use whenever vegetal cover is depleted due to drought, epidemic, fire or any other cause, or for rehabilitation of the area. Such action will not exclude the closed area from the grazing lease.

(9) Authorized grazing use of the leased land may be adjusted by the Authorized Officer to conform to needed refinements in the allotment management plan as a result of more accurate determinations of grazing capacity, season and area of use, class of livestock, etc. Proportionate adjustment will be made in the annual grazing fee for the subsequent grazing season.

(10) The issuance of a grazing lease does not alter or restrict the authorized public use of the leased land including, but not limited to, hunting, fishing, camping, or hiking on such lands in accordance with the laws of the United States or of the State in which the lands are located, nor may the lessee interfere in any manner with the proper exercise of such rights. Neither shall the lessee maintain locked gates, signs, or other devices which prevent or interfere with public use of the leased land. Nor shall the lessee restrict or limit prospecting, locating, developing, mining, or patenting the mineral resources in the public land; miners, prospectors, and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased land for all lawful purposes.

(11) The Authorized Officer may require the lessee, as a condition to the granting and continued effectiveness of grazing leases, to fence or to contribute an equitable share to the cost of fencing the allotted areas and the maintenance of such fences.

(j) *Change in grazing seasons.* Any lessee who desires to use the leased land for a period or periods other than those authorized by his lease may, upon written approval of the Authorized Officer and prior to his annual billing notice, be allowed to use the amount of his authorized grazing use during any other period of time for which the lease area is classified as proper for use: *Provided:*

(1) Adjustment in season, time, or numbers does not result in an increase in the number of animal unit months utilized;

(2) Such use will not be detrimental to the resources of the leased area; and

(3) Such use will not adversely affect other lessees.

(k) *Interest of Members of Congress prohibited.* No Member of or delegate to Congress shall be admitted to any share or part of any grazing lease issued or to derive any benefit to arise therefrom (41 U.S.C. sec. 22; 18 U.S.C. sec. 431–433).

(l) *Exchange-of-use agreements.* The Authorized Officer may enter into an exchange-of-use agreement with any applicant having ownership or control of non-Federal land interspersed with and normally grazed in conjunction with the surrounding public land. The grazing use authorized, will be without payment of fees, and will not exceed the grazing capacity of such non-Federal land.

(m) *Fees for grazing leases and crossing permits*—(1) *Lease rates.* Each holder of a grazing lease will be charged annual grazing fees for the animal unit months (AUM's) authorized by the grazing lease, at a rate per animal unit month (AUM). All grazing fee billings shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock six (6) months of age or over allowed on the leased area will be considered as a part of the total number for which a lease has been issued. No fees will be charged for livestock under 6 months of age.

(i) A minimum annual charge of $10 will be made on all leases.

(ii) The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the FEDERAL REGISTER. The rate or rates will become effective as of the date of such publication and will be applied to all billing notices issued thereafter.

(2) *Crossing permits.* Upon application filed with the Authorized Officer by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of 1 cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited that no substantial amount of forage will be consumed in transit.

(3) *Payment of rental fees and effect of failure to pay.* No grazing lease or renewal thereof shall be executed by the Authorized Officer until payment of all fees due the United States under the regulations in this part has been made. The first grazing fee payment must be made within 15 days of receipt of billing; if not paid within that time, the lease shall not be issued by the Authorized Officer. Upon timely payment of the first grazing fee payment, the lease will be executed and forwarded to the lessee. Subsequent annual grazing fee payments are due the United States upon receipt of the billing notice and are payable in advance of the first grazing period for

the full amount as indicated on the fee notice. No lease shall be effective to authorize grazing use thereunder until such advance payment has been made. A lease may be canceled pursuant to § 4125.1–1 (h) for failure to make timely payment.

(4) *Refunds.* No refunds of grazing fees properly paid in accordance with the regulations in this part and the terms of the grazing lease will be made because of the lessee's failure to make full grazing use as authorized by the lease. However, during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of livestock disease during the life of the grazing lease, the Director on proper application may remit, refund, reduce in whole or in part, or postpone the payment of grazing fees for such period of depletion or general epidemic as he may determine. No part of the grazing fee paid will be refunded because of cancellation, relinquishment, or assignment, except as provided in § 4125.1–1(i) (3), (5), (8), and (9).

(n) *Period of lease.* A grazing lease or lease renewal may be issued for any period not in excess of 10 years and may be limited by the Authorized Officer to the term of a lease or control of lands that have been recognized as the basis for the grazing lease.

§ 4125.1–2 Assignment and relinquishment of grazing lease.

(a) *Assignment of grazing lease.* The lessee may assign a grazing lease only with the consent of the Authorized Officer; provided that the assignee has control of preference lands. The Authorized Officer will require the assignee to furnish proof of ownership or control of preference lands. The proposed assignment must be made on a form approved by the Director and must be filed with the Authorized Officer within 90 days from date of its execution. It must contain all the terms and conditions agreed upon between the parties and will be made effective only for the unexpired period of the assignor's lease. The assignment, properly executed and signed by the assignor, and the new application signed by the assignee will constitute the assignee's acceptance of the terms of the grazing lease. No assignment will be recognized or confer on the assignee any right to use the leased area until approved by the Authorized Officer. Advance grazing fees paid by the assignor may be credited to the assignee. All cooperative agreements and permits to construct or maintain range improvements on the leased land must be assigned at the time of the grazing lease assignment.

(b) *Relinquishment of grazing lease.* Upon written request, the Authorized Officer may accept a grazing lease relinquishment, in whole or in part, provided that all fees and charges then due have been paid.

§ 4125.1–4 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the leased lands*—(1) *Qualifications of applicant for range improvement permit.* An applicant for a permit to construct or maintain range improvements, or to use and maintain range improvements constructed and owned by a prior occupant of the leased land, must be qualified under § 4121.1–1 and hold a valid lease.

(2) *Applications.* Applications for permits must be approved prior to construction. Applications for permits must be filed with the Authorized Officer on a form approved by the Director. Construction of range improvements without an approved permit may result in cancellation of the grazing lease as provided in § 4125.1–1(h).

(3) *Appeals.* The Authorized Officer will act on the application and such action shall be final unless the applicant appeals.

(4) *Assignments.* Assignments of range improvement permits must be be filed with the Authorized Officer on a form approved by the Director and are not effective until approved by the Authorized Officer.

(5) *Permit standards.* The Authorized Officer will specify the minimum Bureau of Land Management standards and design for all range improvements. Failure to comply with the standards and design may result in cancellation of the range improvement permit and/or the grazing lease as provided in § 4125.1–1(h).

(6) *Cooperative agreements.* A lessee may enter into a cooperative agreement with the Authorized Officer to construct and maintain range improvements upon the leased land. Failure to comply with the terms of such an agreement within a reasonable time, as allowed by the Authorized Officer, may result in the cancellation of the agreement and/or the grazing lease as provided in § 4125.1–1(h). A cooperative agreement for range improvements shall be made on a form approved by the Director.

(7) *Removal of improvements; compensation for loss of improvements.* (i) When a grazing lease expires or is terminated, the Authorized Officer may require an applicant for a subsequent lease to agree to compensate the prior lessee for the current value of his share of the cost of authorized permanent improvements placed on the leased land. The prior lessee must file a written application for compensation within 30 days after the date of termination or expiration of his lease or the date of the final decision terminating it. The amount of compensation shall be determined in accordance with § 4125.1–4(a)(8)(i). The failure of the new lessee to pay the prior lessee in accordance with such agreement shall be cause for cancellation of the new grazing lease.

(ii) The leasee will be allowed ninety (90) days from the date of expiration or termination of the grazing lease within which to remove improvements not disposed of in the manner set forth in subdivision (i) of this subparagraph; if not removed or otherwise disposed of within the said period or any extension thereof granted by the Authorized Officer, such improvements shall become the property of the United States. No improvements may be removed if the lessee is in default with respect to the grazing lease.

(8) *Leased land subject to disposition; compensation for loss of improvements* (i) Ordinarily, before an application for disposal of leased lands under the public land laws is allowed, the applicant must agree to compensate the lessee or other party for any authorized range improvements in which the lessee or other party has a financial investment. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, such matters shall be determined by the Authorized Officer. The failure of the applicant to comply with the agreement or the conditions fixed by the Authorized Officer shall be cause for cancellation of any right or interest in the land acquired by the applicant by reason of the allowance of the application. If improvements have been constructed in whole or in part with Federal funds, are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), the application may be allowed in the discretion of the Authorized Officer without compensation to the United States for its share of the value of the improvements. In such cases, the Authorized Officer shall determine whether the grazing improvements are needed by the United States and whether the probable salvage value is sufficient to warrant removal of the salvageable materials.

(b) *Contributions for administration, protection, and improvement of public lands.* The Authorized Officer may accept contributions, made under section 9 of the Taylor Grazing Act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction.

(1) Any individual, association, corporation, State or local body or private group, may enter into an agreement with the Authorized Officer with respect to such contribution.

§ 4125.1–5 Pledge of leases as security for loans.

(a) A grazing lease may be pledged as security for a loan from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the Authorized Officer a written statement concerning the status of the grazing lease and related information. A service charge of $10 will be made for searching the records, except that Federal and State lending agencies shall be exempt from such charge.

(b) A borrower-lessee desiring an extension of the grazing lease term may file a request therefor with the Authorized Officer, setting forth the name of the lending agency, purpose and amount of the loan, and the need for an extension of the grazing lease. If the Authorized Officer determines that an extension will not conflict with the applicable laws and is not contrary to the public interest, he may issue a new grazing lease for a period up to 10 years from the date of the loan but not to exceed the period of the loan.

(c) If the preference land of a lessee is acquired by a lending agency through foreclosure or otherwise, the agency, its grantees and lessees, or parties authorized by it to occupy the preference lands, may, if qualified, file an application for the issuance of a new grazing lease. If, in selling the property, the lending agency takes back the mortgage on the property, the agency will receive the same administrative consideration as in the case of an original loan.

(d) Where a lending agency files notice with the Authorized Officer that it has made a loan and has accepted a grazing lease as security, such agency will be advised of any adverse action taken affecting the lease. The failure of the Bureau of Land Management to give timely notice of any such adverse action shall impose no liability or obligation on the Bureau of Land Management or any of its employees.

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4125.1-1(h) this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes Circular 2266.

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Title 43—PUBLIC LANDS: INTERIOR

Replaced by Circ 2334

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT: GENERAL

[Circular No. 2314]

PART 3100—OIL AND GAS LEASING

Subpart 3108—Terminations and Expirations

EXCEPTIONS TO AUTOMATIC TERMINATIONS AND REINSTATEMENT OF TERMINATED LEAVES

Section 3108.2–1 of Subpart 3108, Chapter II of Title 43 of the Code of Federal Regulations is amended to read as follows:

§ 3108.2–1 Automatic terminations and reinstatement.

(a) *Automatic terminations.* Except as provided in paragraph (b) of this section, any lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the appropriate land office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in Subpart 3112.

(b) *Exceptions.* If the rental payment due under a lease is paid on or before its anniversary date but either the amount of the payment has been or is hereafter deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in the lease or stated in a bill or decision rendered by an authorized officer and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency will be considered nominal if it is not more than $10 or five per centum (5 percent) of the total payment due, whichever is more. The authorized officer will send a Notice of Deficiency to the lessee on a form approved by the Director. The notice will be sent by certified mail, return receipt requested, and will allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the appropriate office. If the payment called for in the notice is not paid within the time allowed, the lease will have terminated by operation of the law as of its anniversary date.

(c) *Reinstatement.* (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested. Notices of Termination will not be sent to lessees whose leases terminated prior to

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May 12, 1970. Lessees whose leases terminated prior to May 12, 1970, must file petitions for reinstatement with the appropriate office by close of business on December 31, 1971. Such petitions are subject to all other appropriate provisions of this section.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary.

(d) *Extension of terms of reinstated leases.* In any case where a reinstatement of a terminated lease is granted under this section and the authorized officer finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may, at his discretion, extend the term of such lease for such period as he believes will give the lessee such an opportunity. Such extensions shall be subject to the following conditions:

(1) No extension shall exceed a period equivalent to the time (i) beginning when the lessee knew or should have known of the termination and (ii) ending on the date on which the authorized officer grants such petition.

(2) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(3) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition.

(e) *Service of documents.* The rules governing filing and service of documents set out in § 1840.0-6(e) of this chapter shall apply to notices of deficiency and termination issued under the provisions of this section .

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 27, 1971.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT: GENERAL

[Circular No. 2314]

PART 3100—OIL AND GAS LEASING

Subpart 3108—Terminations and Expirations

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Section 3108.2-1 of Subpart 3108, Chapter II of Title 43 of the Code of Federal Regulations is amended to read as follows:

§ 3108.2-1 Automatic terminations and reinstatement.

(a) *Automatic terminations.* Except as provided in paragraph (b) of this section, any lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the appropriate land office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in Subpart 3112.

(b) *Exceptions.* If the rental payment due under a lease is paid on or before its anniversary date but either the amount of the payment has been or is hereafter deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in the lease or stated in a bill or decision rendered by an authorized officer and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency will be considered nominal if it is not more than $10 or five per centum (5 percent) of the total payment due, whichever is more. The authorized officer will send a Notice of Deficiency to the lessee on a form approved by the Director. The notice will be sent by certified mail, return receipt requested, and will allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the appropriate office. If the payment called for in the notice is not paid within the time allowed, the lease will have terminated by operation of the law as of its anniversary date.

(c) *Reinstatement.* (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested. Notices of Termination will not be sent to lessees whose leases terminated prior to

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May 12, 1970. Lessees whose leases terminated prior to May 12, 1970, must file petitions for reinstatement with the appropriate office by close of business on December 31, 1971. Such petitions are subject to all other appropriate provisions of this section.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary.

(d) *Extension of terms of reinstated leases.* In any case where a reinstatement of a terminated lease is granted under this section and the authorized officer finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may, at his discretion, extend the term of such lease for such period as he believes will give the lessee such an opportunity. Such extensions shall be subject to the following conditions:

(1) No extension shall exceed a period equivalent to the time (i) beginning when the lessee knew or should have known of the termination and (ii) ending on the date on which the authorized officer grants such petition.

(2) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(3) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition.

(e) *Service of documents.* The rules governing filing and service of documents set out in § 1840.0-6(e) of this chapter shall apply to notices of deficiency and termination issued under the provisions of this section.

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 27, 1971.

[FR Doc.71-15987 Filed 11-2-71;8:47 am]

GPO 839-367

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

[Circular No. 2315]

PART 24—PRESERVATION, USE, AND MANAGEMENT OF FISH AND WILDLIFE RESOURCES

A new Part 24 is added to Subtitle A, Title 43 of the Code of Federal Regulations to read as follows:

Sec.
24.1 Policy.
24.2 Cooperation with States.
24.3 Procedures.
24.4 Exemptions.
24.5 Hunting, fishing, trapping in National Park System.
24.6 Cooperative agreements.

§ 24.1 Policy.

The Secretary of the Interior recognizes that fish and wildlife resources must be maintained for their aesthetic, scientific, recreation, and economic importance to the people of the United States, and that because fish and wildlife populations are totally dependent upon their habitat, the several States and the Federal Government must work in harmony for the common objective of developing and utilizing these resources. It is the policy of the Secretary of the Interior further to strengthen and support, to the maximum extent possible, the missions of the States and the Department of the Interior in the attainment of this objective.

§ 24.2 Cooperation with States.

The effective husbandry of such resources requires the cooperation of State and Federal Government because:

(a) The several States have the authority to control and regulate the capturing, taking, and possession of fish and resident wildlife by the public within State boundaries;

(b) The Congress, through the Secretary of the Interior, has authorized and directed to various Interior agencies certain responsibilities for the conservation and development of fish and wildlife resources and their habitat.

§ 24.3 Procedures.

The following procedures will apply to all areas administered by the Secretary of the Interior through the National Park Service, Bureau of Sport Fisheries and Wildlife, Bureau of Land Management, and Bureau of Reclamation (hereinafter referred to as the Federal agencies). These Federal agencies will:

(a) Within their statutory authority, institute fish and wildlife habitat management practices in cooperation with the States which will assist the States in accomplishing their respective, comprehensive, statewide resource plans;

(b) Permit public hunting, fishing, and trapping within statutory limitations and in a manner compatible with the primary objectives for which the lands are administered. Such hunting, fishing, and trapping and the possession and disposition of fish, game, and fur animals shall be conducted in all other respects within the framework of applicable State laws, including requirements for the possession of appropriate State licenses or permits. The Federal agencies may, after consultation with the States, close all or any portion of land under their jurisdiction to public hunting, fishing, or trapping in order to protect the public safety or to prevent damage to Federal lands or resources thereon, and may impose such other restrictions as are necessary to comply with management objectives;

(c) Consult with the States and comply with State permit requirements in connection with the activities listed below, except in instances where the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities:

(1) In carrying out research programs involving the capturing, taking, or possession of fish and wildlife or programs involving introduction of fish and wildlife;

(2) For the planned and orderly removal of surplus or harmful populations of fish and wildlife except where emergency situations requiring immediate action make such consultation and compliance with State permit requirements infeasible;

(3) In the disposition of fish and wildlife taken under subparagraph (1) or (2) of this paragraph.

Published in 36 F.R. 21034, November 3, 1971 - Effective December 2, 1971.

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§ 24.4 Exemptions.

Exempted from this regulation are the following:

(a) The control and regulation by the United States, in the area in which an international convention or treaty applies, of the taking of those species and families of fish and wildlife expressly named or otherwise covered under any international treaty or convention to which the United States is a party;

(b) Any species of fish and wildlife control over which has been ceded or granted to the United States by any State;

(c) Areas over which the States have ceded exclusive jurisdiction to the United States.

§ 24.5 Hunting, fishing, trapping in National Park System.

Nothing contained herein shall be construed as permitting public hunting, fishing, or trapping on National Parks, Monuments, or Historic areas of the National Parks System, except where Congress or the Secretary of the Interior has otherwise declared that hunting, fishing, or trapping is permissible.

§ 24.6 Cooperative agreements.

The Federal agencies and States will enter into written cooperative agreements containing the plans, terms, and conditions of each party in carrying out the intent of this regulation when such agreements are desired by the States. Such agreements will be reviewed periodically by both parties and, when appropriate, adjusted to reflect changed conditions.

W. T. PECORA,
Under Secretary of the Interior.

OCTOBER 27, 1971.

[FR Doc.71-15988 Filed 11-2-71;8:47 am]

GPO 839-228

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular No. 2316]

PART 2780—SPECIAL AREAS

Subpart 2785—Sales of Unintentional Trespass Lands

Subpart 2785 of Chapter II, Title 43 of the Code of Federal Regulations is deleted in its entirety.

HARRISON LOESCH,
Assistant Secretary of the Interior.

NOVEMBER 8, 1971.

[FR Doc.71-16564 Filed 11-11-71;8:49 am]

Published in 36 F.R. 21677, November 12, 1971 - Effective November 12, 1971.

Circular Distribution List

GPO 839-368

Baltrusch

21678

FEDERAL REGISTER
Vol. 36 No. 219
Friday, November 12, 1971

RULES AND REGULATIONS

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular No. 2316]

PART 2780—SPECIAL AREAS

Subpart 2785—Sales of Unintentional Trespass Lands

The purpose of this amendment is to delete from the regulations those that implemented the Act of September 26, 1968 (43 U.S.C. 1431–35). This act authorized the sale of certain land that was affected by unintentional trespass on or before September 26, 1968. The Act expired on September 26, 1971. Subpart 2785 is being deleted in its entirety. The regulations contained therein will be applied to sales initiated under the regulations prior to September 26, 1971, and which, in accordance with section 5 of the Act, may still be completed. No other substantive changes are intended.

It is the policy of the Department of the Interior to give notice of proposed rule making and to invite the public to participate in rule making except where such participation would be impracticable, unnecessary, or contrary to the public interest and a specific finding to this effect is published with the rules or regulations (36 F.R. 8336, May 4, 1971). Public participation is unnecessary in this case since the amendment simply removes provisions from the regulations, the legal effect of which has expired by operation of law.

Subpart 2785 of Chapter II, Title 43 of the Code of Federal Regulations is deleted in its entirety.

Effective date: November 12, 1971.

HARRISON LOESCH,
Assistant Secretary of the Interior.

NOVEMBER 8, 1971.

[FR Doc.71-16564 Filed 11-11-71;8:49 am]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2317]

PART 2090—SPECIAL LAWS AND RULES

PART 2200—EXCHANGES; GENERAL PROCEDURES

Segregative Effect of Applications for Exchange

1. Section 2091.2-3 of Subpart 2091 is revised to read as follows:

§ 2091.2-3 Exchange.

The filing of a valid formal application for exchange under the regulations of Group 2200 of this chapter will segregate the selected public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, will not be accepted, will not be considered as filed, and will be returned to the applicant. The segregative effect of the application on the lands covered by the recall or rejection of an exchange application will terminate at 10 a.m. on the 30th day from and after the date a notice of the recall or rejection of the application is first posted in the land office having jurisdiction over the lands.

2. Section 2202.5 of Subpart 2202 is revised to read as follows:

§ 2202.5 Segregation upon application.

The filing of a valid formal application for exchange will segregate the selected public lands as provided in § 2091.2-3 of this chapter.

HARRISON LOESCH,
Assistant Secretary of the Interior.

NOVEMBER 16, 1971.

[FR Doc.71-17088 Filed 11-22-71;8:48 am]

Published in 36 F.R. 22238, November 23, 1971 - Effective October 23, 1971.

Circular Distribution List

GPO 839-369

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2318]

PART 2890—MISCELLANEOUS RIGHTS-OF-WAY

Subpart 2893—Acquired Lands in Wildlife Refuges

Part 2890 is amended as follows:
Subpart 2893 is deleted in its entirety.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 10, 1971.

[FR Doc.71-18353 Filed 12-15-71;8:45 am]

Published in 36 F.R. 23908, December 16, 1971.

Circular Distribution List

☆ U. S. GOVERNMENT PRINTING OFFICE 1972--780-606/97 REGION NO. 8

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2319]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Grazing Fees

Additionally, 43 CFR 4115.2-1(k)(1)(ii) of the grazing regulations is amended as follows:

§ 4115.2-1 Licenses and permit procedures; requirements and conditions.

* * * * *

(k) *Fees, payments and refunds*—(1) *Fees.* * * *

(ii) Fees will be established by the Secretary in eight equal annual increments, effective with the fee year beginning March 1, 1973, to attain the fair market value of range forage at the 1980 fee year. Fair market value is that value established by the Western Livestock Grazing Survey of 1966 or as determined by a similar study which may be conducted periodically to update the fee base, if deemed necessary. Annual adjustments will also be made for any of the 1973-80 fee years, and thereafter, to reflect current market values.

* * * * *

It is the policy of the Department of the Interior to give notice of proposed rule making and to invite the public to participate in rule making except where such participation would be impracticable, unnecessary, or contrary to the public interest and a specific finding to this effect is published with the rules or regulations (36 F.R. 8336, May 4, 1971). In this case proposed rule making is impracticable and not in the public interest since it would delay timely issuance of grazing leases and licenses because the billing of affected livestock operators could not be accomplished until sometime in late February or early March 1972. The Department's regulations provide that the grazing year shall begin on March 1, 1972, and that no grazing license or permit may be issued until the fees have been paid. The issuance of billings at such a late date would therefore result in disruption of the Department's administration of the Taylor Grazing Act, and would impose an undue burden upon users of the range. In addition, such a delay with attendant price uncertainties would not be consonant with the the President's Economic Stabilization Program.

W. T. PECORA,
Acting Secretary of the Interior.

DECEMBER 30, 1971.

[FR Doc.72-263 Filed 1-6-72;8:47 am]

Published in 37 F.R. 213, January 7, 1972 - Effective January 7, 1972.

Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

[Circular 2320]

PART 25—USE OF THE "JOHNNY HORIZON" SYMBOL

Sec.
25.0–1 Purpose.
25.0–2 Objectives.
25.0–3 Authority.
25.0–5 Definitions.
25.1 Commercial use.
25.2 Noncommercial use.
25.3 Contributions.
25.4 Unauthorized use.

A new Part 25 is added to Subtitle A, Title 43 of the Code of Federal Regulations to read as follows:

§ 25.0–1 Purpose.

This subpart establishes rules for the commercial and noncommercial use of the "Johnny Horizon" symbol and name.

§ 25.0–2 Objectives.

The objectives of these regulations are (a) to maintain the integrity of the name and characterization of "Johnny Horizon"—the official symbol for a public service antilitter and environmental cleanup program to maintain the beauty and utility of the Nation's public lands, (b) to authorize the noncommercial use of the symbol, and (c) to provide for use or royalty fees for the manufacture, reproduction, or use of the symbol for commercial purposes.

§ 25.0–3 Authority.

The Act of September 25, 1970 (84 Stat. 870) authorizes the Secretary of the Interior to establish and collect use or royalty fees for the manufacture, reproduction, or use of the "Johnny Horizon" name and symbol. The Act makes unauthorized manufacture, reproduction, and use a crime (18 U.S.C. 714). The Act also provides that royalty and use fees will be deposited in a special account and used for the purpose of furthering nationwide antilitter campaigns.

§ 25.0–5 Definitions.

As used in this part:

(a) The term "Johnny Horizon" means the name or characterization "Johnny Horizon" originated by the Bureau of Land Management, Department of the Interior, as the official symbol for a public service antilitter and environmental cleanup program, and as described in 18 U.S.C. 714, the representation of a tall, lean man, with strong facial features, who wears slacks and sport shirt buttoned to the collar (both green, when colored), no tie, a field jacket (red, when colored), boot-type shoes (brown, when colored) and who carries a backpack.

(b) "Director" means the Director of the Bureau of Land Management, or the person he delegates to act for him on matters pertaining to the "Johnny Horizon" program.

(c) "Johnny Horizon program" means those activities and supporting services conducted in furtherance of a public service antilitter and environmental cleanup campaign which uses the "Johnny Horizon" name or symbol.

§ 25.1 Commercial use.

(a) *Licenses.* The "Johnny Horizon" name or symbol may be used for commercial purposes only under a license issued pursuant to the regulations in this part. Licenses will be granted to any individual, business, or corporation if the Director determines that the proposed commercial use will promote the purposes of the "Johnny Horizon" program and will not impair the integrity of the name or symbol.

(b) *Terms and conditions.* In order to maintain the integrity of the "Johnny Horizon" program and to regulate the manufacture, importation, reproduction,

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and use of the "Johnny Horizon" name and symbol licenses will be subject, but not limited, to the following terms and conditions:

(1) Payment of fair return to the United States for its property through negotiation of use or royalty fees.

(2) Licenses are nontransferable.

(3) All proposed products must be approved by the Director prior to manufacture, importation, or reproduction by the licensee. Substances inherently dangerous to users shall not be used.

(4) All licenses shall contain Equal Employment Opportunity provisions in compliance with Executive Order 11246, as amended (30 F.R. 12319 (1965)), and regulations issued pursuant thereto (41 CFR Chapter 60 and Part 17 of this chapter).

(5) Alteration of artwork must first be approved by the Director.

(6) Licenses shall be subject to revocation by the Director at any time he finds that (i) the use involved is injurious to the characterization of "Johnny Horizon," or (ii) there has been a violation of the terms and conditions of the license.

§ 25.2 Noncommercial use.

(a) *Permitted uses.* Products bearing the name or symbol of "Johnny Horizon," provided by the Government or acquired from licensed sources, may be used without a license or advance permission by any person or organization for the purpose of furthering antilitter and environmental cleanup campaigns, provided that no charge is made by the unlicensed user for service or products.

(b) *Technical advice.* To the extent possible, technical advice will be given to interested parties upon request to the Director.

(c) *Cooperation.* The Director may enter into cooperative agreements with other Federal and State agencies for use of the name or symbol of "Johnny Horizon." Agreements shall state the responsibilities of each agency pertaining to (1) maintaining the integrity of the program, (2) supplying materials, (3) assisting other groups or organizations, (4) restrictions of uses of materials, (5) altering artwork, and (6) making arrangements with public personalities engaged in the program.

§ 25.3 Contributions.

The Director may accept contributions of money and personal property by any person or organization for use in the "Johnny Horizon" program.

§ 25.4 Unauthorized use.

Manufacture, importation, reproduction, or use of the "Johnny Horizon" name or symbol, except as provided for under these regulations in this part is prohibited (18 U.S.C. 714).

HARRISON LOESCH,
Assistant Secretary of the Interior.

FEBRUARY 4, 1972.

[FR Doc.72-2144 Filed 2-11-72;8:51 am]

☆U.S. GOVERNMENT PRINTING OFFICE 1972--780-808/149 REGION NO. 8

Circular No. 2321

REGULATIONS PERTAINING TO:

LEASING OF MINERALS OTHER THAN OIL AND GAS

As contained in Title 43 of the Code of Federal Regulations

U.S. Department of the Interior

Bureau of Land Management

Reprint of regulations current as of March 7, 1972

Group 3500—Leasing of Minerals Other Than Oil and Gas

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

Subpart 3500—Introduction—General

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3500.0–3 Authorities.
3500.0–5 Definitions.
3500.1 Minerals subject to leasing.
3500.1–1 Public domain and acquired minerals.
3500.1–2 Reports required.
3500.1–3 Special acts.
3500.2 Multiple development.

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3501.1–1 Protection of preexisting rights.
3501.1–2 Unsurveyed lands, General.
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3501.1–4 Acreage limitations.
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3501.3–3 Transfer of surface control.
3501.4 Special leasing acts.
3501.4–1 Lands and deposits subject to prospecting and leases.
3501.4–2 Consent of administrator.

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3505.3 Solid (hardrock) minerals.
3505.3–1 Types of contracts.
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3506.4 Royalty interests.
3506.5 Extensions.

Subpart 3509—Surface Management

3509 Surface management.
3509.1 See Title 43 CFR part 23.

Subpart 3500—Introduction—General

§ 3500.0–3 Authorities.

The statutory authority for leasing the minerals in this part is contained in the cited acts.

(a) *Public Domain.* The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.), the act of February 7, 1927 (44 Stat. 1057; 30 U.S.C., 281–287) and the act of April 17, 1926 (44 Stat. 301; 30 U.S.C., 271–276) as amended, hereinafter called "the act", provide for the leasing of all leasing act minerals.

(1) *Coal.* Sections 2 to 8, inclusive, of the act of February 25, 1920 (41 Stat. 438 et seq., 30 U.S.C. 201, 202–208), as amended.

(2) *Potassium.* Sections 1 to 7 of the act of February 7, 1927, as amended (44 Stat. 1057, 30 U.S.C. secs. 281–287).

(3) *Sodium.* Sections 23 through 25 of the act of February 25, 1920 (41 Stat. 447; 30 U.S.C. sec. 189, 261–263).

(4) *Phosphate.* Sections 9 to 12, inclusive of the act of February 25, 1920 (41 Stat. 440, 441, 30 U.S.C. 211–214) as amended.

(5) *Sulphur.* Sections 1 to 7 of the Act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271–276).

(6) *Asphalt.* The Act of February 25, 1920 (41 Stat. 437; 30 U.S.C., sec. 181), as amended by the Act of September 2, 1960 (74 Stat. 781; 30 U.S.C. sec. 181, 241).

(b) *Acquired lands*—(1) *Leasable.* (i) The Mineral Leasing Act for acquired lands; enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359).

(ii) The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3 effective July 16, 1946 (3 CFR 1946 Supp., Chapter IV), except as to leases or permits outstanding on August 7, 1947.

(2) *Solid (hardrock) minerals.* (i) Section 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099) transferred the functions of the Secretary of Agriculture and the Department of Agriculture relative to the leasing or other disposal of minerals in certain acquired lands to the Secretary of the Interior.

(ii) Section 3 of the act of September 1, 1949 (63 Stat. 683) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83).

(iii) Section 3 of the act of June 23, 1952 (66 Stat. 285), authorized the Secretary of the Interior to administer, in the manner prescribed by section 402 of Reorganization Plan No. 3 of 1946, mineral deposits other than those subject to the provisions of the Mineral Leasing Act for Acquired Lands, in that part of the Juan Jose Lobato Grant Numbered 164, which lies northerly of the Chama River (North Lobato tract) and in part of the Anton Chica Grant Numbered 29 (El Pueblo tract) as more particularly described in section 1 of the act of June 28, 1952.

(c) *Special acts.* (1) Gold and silver in confirmed private land grants. The act of Congress approved June 8, 1926 (44 Stat. 710; 30 U.S.C. 291–293).

(2) Asphalt in Oklahoma. The act of June 28, 1944 (58 Stat. 483–485).

(3) Silica sands and other nonmetallic minerals in certain lands in Nevada. The act of May 9, 1942 (56 Stat. 273) as amended by the act of October 25, 1949 (63 Stat. 886).

(i) Act of February 27, 1927 (44 Stat. 1057).

(ii) Leasable. Mineral Leasing Act of February 25, 1920 (41 Stat. 437) as amended.

(4) Leases of sand and gravel in certain lands patented to the State of Nevada. The act of June 8, 1926 (44 Stat. 708).

(5) Reserved minerals in lands patented to the State of California for park or other purposes. The act of March 3, 1933 (47 Stat. 1487), as amended by the act of June 5, 1936 (49 Stat. 1482) and the act of June 29, 1936 (49 Stat. 2026).

(6) Certain National Forest lands in Minnesota. (i) The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(ii) Leasable. Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended.

(7) Leases for minerals in lands withdrawn for reclamation purposes within the Lake Mead Recreation Area. The act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(8) Prospecting and mineral leasing within National Forest Wilderness. National Forest Wilderness Act of September 3, 1964. (78 Stat. 890; 16 U.S.C. 1131–1136; 43 U.S.C. 1201.)

(9) Development of minerals in lands within Whiskeytown-Shasta-Trinity National Recreation Area. Section 6 of the act of November 8, 1965 (Public Law 89–336; 79 Stat. 1295). (i) Solid (Hardrock) minerals. (*a*) Section 10 of the act of August 4, 1939 as amended (53 Stat. 1196; 43 U.S.C. 387).

(*b*) Section 3 of the Act of September 1, 1949, (63 Stat. 683, 30 U.S.C. 192c).

(ii) Leasable. (*a*) Mineral Leasing Act of February 25, 1920 as amended (30 U.S.C. 181 et seq.).

(*b*) Acquired Lands Mineral Leasing Act of August 7, 1947, (30 U.S.C. 351–359).

§ 3500.0–5 Definitions.

(a) *Sole party in interest.* A sole party in interest in a lease or permit or an application for a lease or a permit is a party who is and will be vested with all legal and equitable rights under the lease or permit. No one is, or shall be deemed to be, a sole party in interest with respect to a lease or permit in which any other party has any of the interests described in this section. This requirement of disclosure in an application for lease or permit of an applicant's or other parties' interest in a lease or permit, if issued, is predicated on the departmental policy that all applicants and other parties having an interest in simultaneously filed applications for permits shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease or permit includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease or permit, and any participation or any defined or undefined share in any increments, issues, or which may be derived from or which may accrue in any manner from the lease or permit based upon or pursuant to any agreement or understanding existing at the time when the application is filed, is deemed to constitute an "interest" in such lease or permit.

(b) *Regional mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

(c) *Rule of approximation.* The rule of approximation applies where an application embraces an acreage in excess of the acreage limitation; it may be allowed for the excess acreage if exclusion of the smallest legal subdivision involved would result in a deficiency which would be greater than the excess resulting from the inclusion of such subdivision.

§ 3500.1 Minerals subject to leasing.

§ 3500.1–1 Public domain and acquired minerals.

The Mineral Leasing Act, as amended, the Acquired Lands Leasing Act and the Reorganization Act provide for the leasing of deposits of coal; chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium; phosphate; native asphalt, solid and semi-solid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried; sulphur in the States of Louisiana and New Mexico; minerals in acquired lands which would be subject to location under the United States mining laws if located in public domain lands; and for the development of sodium, magnesium, aluminum, or calcium deposits, in any of the forms described and associated with the potassium deposits.

§ 3500.1–2 Reports required.

All reports concerning operations shall be filed with the Mining Supervisor.

§ 3500.1–3 Special acts.

(a) Gold and Silver in Confirmed Private Land Grants.

(b) Asphalt in Oklahoma.

(c) Nevada. (1) Silica sands and other nonmetallics, deposits of phosphate, coal, sodium and potash in lands withdrawn by Executive Order No. 5105 of May 3, 1929.

(2) Sand and gravel in certain lands patented to the State.

(d) Reserved minerals in lands patented to the State of California for park and other public purpose.

(e) Certain National Forest lands in Minnesota. Permits the prospecting, development, and utilization of those mineral resources which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws, and for the development and utilization for which no other authority exists.

(f) Lake Mead Recreation Area. All minerals subject to the general mining laws and mineral deposits of coal, phosphate, potassium, and sodium.

(g) National Forest Wilderness. All leasing act minerals remain subject to leasing until midnight December 31, 1983.

(h) Whiskeytown-Shasta-Trinity National Recreation Area. Permits the leasing of nonleasable and leasable minerals in the area.

§ 3500.2 Multiple Development.

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

Subpart 3501—Lands Subject to Leasing

§ 3501.1 Public Domain.

§ 3501.1–1 Protection of preexisting rights.

(a) *Potassium.* (1) Section 6 of the act of February 7, 1927, supra, which repealed the act of October 2, 1917 (40 Stat. 297), excepts valid claims existing at the passage of the act and thereafter maintained in compliance with the law under which initiated, which claims may be perfected under such law, including discovery.

(2) As to potassium mining claims, only those claims may be patented which were initiated prior to and were valid existing claims on October 2, 1917, and have since been duly maintained as such.

(b) *Sodium.* Mining claims for deposits described in part 3500 which were valid on February 25, 1920, or on lands in San Bernardino County, Calif., on December 11, 1928, if duly maintained, may be patented under the law under which they were initiated. Otherwise such deposits may be secured only under the Mineral Leasing Act.

(c) *Phosphate.* Mining claims for deposits described in part 3500 which were valid on February 25, 1920, if duly maintained, may be patented under the law under which they were initiated. Otherwise such deposits may be secured only under the Mineral Leasing Act.

(d) *Sulphur.* Mining claims for sulphur deposits on lands such as specified in part 3500 situated in Louisiana which were valid on April 17, 1926, or on such lands in New Mexico, on July 16, 1932, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271–276).

§ 3501.1–2 Unsurveyed lands, General.

(a) All prospecting permits may be issued either by metes and bounds description or approved protraction surveys. All leases, preference right or competitive, must be surveyed prior to issuance of a lease.

(b) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(1) *Survey for leasing—Applicant's expense.* (*a*) Prior to the issuance of a lease based upon discovery of valuable deposits of potassium, sodium or sulphur, the survey for unsurveyed lands will be at the expense of the applicant.

(*b*) A deposit of the estimated cost of making a survey of the lands as officially determined by the Bureau of Land Management will be required. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivision of such survey.

(2) *Government expense.* Prior to issuance of a lease based upon discovery of coal and on all competitive leases, the survey of unsurveyed lands will be at the expense of the Government.

§ 3501.1–3 Description of lands in offer.

A complete and accurate description of the lands for which the lease is desired is required. The lands in the lease or permit shall be in reasonably compact form entirely within an area of 6 miles square or within an area not exceeding six surveyed or protracted sections in length or width; except for coal cases where noncontiguous tracts can be efficiently worked as a single mine or unit.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township and range.

(b) *Protracted surveys.* When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(c) *Unsurveyed lands.* If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(d) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and Alaska.* In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impractical to furnish a metes and bounds description, as required in paragraph (c) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high watermark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations § 3100.1–5 and the maximum or minimum area to be included in the lease pursuant to § 3110.1–3. The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

§ 3501.1–4 Acreage limitations.

(a) *Computing acreage holdings.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be such party's proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation, unless he is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(b) *Allowable acreage.* Except as hereinafter stated, no person, association, or corporation may hold at any one time leases or permits exceeding the acreage as stated below in any one state, except for phosphate in the United States, whether directly through the ownership of such leases and permits, or interest therein, and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such leases and permits, or interest therein, and applications therefor. The rule of approximation applies to all applications for permits and leases.

(1) *Coal* (i) A permit may not exceed 5,120 acres. Holdings in permits and leases shall not exceed 46,080 acres.

(ii) There is no statutory limitation on the acreage that may be included in any one leasing tract. However, the authorized officer after consultation with the mining supervisor of the Geological Survey, will determine the amount of acreage to be included in each leasing tract, taking into consideration the area required for plant facilities and such other data as may be pertinent.

(2) *Potassium.* A lease or permit may not exceed 2,560 acres. Holdings in permits shall not exceed 51,200 acres. Holdings in leases may not exceed 25,600 acres in one or more mining units.

(3) *Sodium.* A lease or permit may not include more than 2,560 acres. Holdings in permits and leases shall not exceed 5,120 acres.

(4) *Phosphate.* A lease or permit may not exceed 2,560 acres. Holdings in leases and permits shall not exceed 20,480 acres in the United States.

(5) *Sulphur.* A lease or permit may not include more than 640 acres. Holdings may not include more than three permits or leases.

(6) *Asphalt.* A lease may not include more than 2,560 acres. Holdings may not include more than 7,680 acres in any one State irrespective of the number of leases.

§ 3501.1–5 Exceptions.

(a) National parks and monuments.

(b) Indian reservations.

(c) Incorporated cities, towns, and villages.

(d) Naval petroleum and oil shale reserves.

(e) Lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

§ 3501.1–6 Rejections.

Applications for permits or leases which are filed for lands not available for prospecting or leasing, or which do not comply with the regulations in this part as to acreage limitations and land descriptions will be rejected.

§ 3501.2 Acquired lands.

§ 3501.2–1 Lands and deposits not subject to leasing.

(a) Lands acquired for the development of their mineral deposits.

(b) Lands acquired by forclosure or otherwise for resale.

(c) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.).

(d) Lands in incorporated cities, towns, and villages.

(e) Lands in national parks and monuments.

(f) Lands set apart for military or naval purposes, including lands within the naval petroleum and oil shale reserves.

(g) Lands which are tide lands, submerged coastal lands, within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

§ 3501.2–2 Sale or conveyance of lands.

Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof. shall be subject to any lease or permit theretofore issued under the act.

§ 3501.2–3 Outstanding permits and leases.

(a) *Acquired lands*—(1) *Leasable minerals.* Coal, phosphate, sodium, potassium, sulphur, or oil shale leases outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act subject, in each case, to such appropriate conditions as may be prescribed.

(2) *Solid (hardrock) minerals.* Prospecting permits and leases, heretofore issued by the Department of Agriculture will be continued to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

§ 3501.2–4 Description of lands in application.

(a) *Surveyed lands.* If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b) *Lands not surveyed under rectangular survey.* (1) If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(2) If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

(3) In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundry of the desired tract, the description in the offer must be expanded to include such courses and distances.

(4) Application or offer must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(5) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted in such offer or application.

(c) *Accreted lands.* Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundry of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

§ 3501.2–5 Acreage limitations.

(a) *Restrictions on holdings.* The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings; such respective holdings shall not be interchangeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

(b) *Allowable acreage*—(1) *Leasable minerals.* See sec. 3501.1–4(b).

(2) *Locatable minerals.* (*Minerals* other than those subject to the 1920 Act as amended.) (i) No applicant may hold more than 20,480 acres under prospecting permit and lease of which not more than 10,240 acres may be held under lease, provided, however, that the Secretary may authorize a lessee to hold under lease an additional 10,240 acres of land if he finds, upon a satisfactory showing submitted by the lessee that such additional acreage is necessary to promote the orderly development of mineral resources and does not result in undue control of the mineral to be mined, removed and marketed, but in no event shall a lessee hold in excess of 10,240 acres of leased land for the mining of any dominant single mineral, nor shall any person at any one time hold more than 20,480 acres under permit and lease in any one State.

(ii) A prospecting permit may not include more than 2,560 acres, and will be issued to the first qualified applicant. The lands in the permit must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. An application for a prospecting permit which covers lands that are not located entirely within an area of six miles square or an area of six surveyed sections in length or width will be rejected in its entirety.

§ 3501.2–6 Consent of administering agency.

(a) *Jurisdiction of lands.* Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered. Such consent to prospecting shall not be deemed to vest in the prospector an exclusive right to exploration or a preference right to a lease under this part.

(b) *Jurisdiction of surface.* Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

(c) *Identification of administering agency.* All applications and offers for permits or leases should name if practicable, the Government agency from which consent to issuance of a permit or lease must be obtained, or the agency that may have title records covering the

ownership of the mineral interest involved, and identify the project, if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

(d) *Right to stipulate.* Lands under jurisdiction of the Department of Agriculture. The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired or are being administered. An application will be rejected if the Secretary of Agriculture does not give his consent. Any lease permit, or other instrument granting the right to mine or remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. All matters relating to the surface of the land and its protection, including responsibility for securing compliance with all applicable regulations and procedures of the Department of Agriculture, the terms of the lease relating to the surface and surface resources, and the stipulations specified for the protection of the land, are functions of the Department of Agriculture. Lessees and permittees will comply with the applicable regulations of the Secretary of Agriculture and will consult with the authorized representative of the Secretary of Agriculture as to matters relating to the surface.

§ 3501.2–7 Lands subject to leasing.

(a) In acquired lands under the act of March 4, 1917 (39 Stat. 1134, 1150; 16 U.S.C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U.S.C. 401, 403(a) and 408), the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118), section 55 of Title I of the act of August 24, 1935 (49 Stat. 750, 781), the act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (56 Stat. 725; 7 U.S.C. 1011(c) and 1018).

(b) In acquired lands, except Indian lands and lands in national parks and monuments, under the jurisdiction of the bureaus of the Department of the Interior where authorized by law.

(c) In those lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83), which were acquired with funds of the United States, or lands received in exchange therefor.

(d) In those portions of the Juan Jose Lobato Grant (North Lobato tract) and of the Anton Chica Grant (El Pueblo tract) in New Mexico, mentioned in paragraph (c) of this section.

§ 3501.3 Withdrawn, reserved or segregated.

§ 3501.3–1 Lands and deposits not subject to leasing.

See §§ 3501.1–5 and 3501.2–1.

§ 3501.3–2 Consent of administrator.

(a) *Requirements when lands are in a withdrawal.* Where any part of the lands embraced in an application for lease, permit or license is within a withdrawal which does not preclude disposition of the deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a lease, permit or license. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease, permit or license.

(b) *Requirements when lands are reserved or segregated.* (1) General statement. With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

(2) Lands disposed of with a reservation of minerals. Where the lands included in a permit, lease or license have been or may be disposed of with reservation of the deposits, a permittee, lessee or licensee must make full compliance with the law under which reservation was made.

(i) *Coal.* See the acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81); June 22, 1910 (36 Stat. 583, 30 U.S.C. 83–85); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301; June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 377); and other laws authorizing such reservation.

(ii) *Potassium.* See the acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(iii) *Sodium.* See the Acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(iv) *Sulphur.* Where lands included in a permit or lease have been disposed of with reservation of sulphur deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the Acts of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291–301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(v) *Asphalt in Oklahoma.* See the Act of February 19, 1912 (37 Stat. 67), and the Act of August 3, 1955 (69 Stat. 445), and the regulations thereunder in Subpart 2781 of this chapter.

(c) *Special Stipulations.* Applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

§ 3501.3–3 Transfer of surface control.

Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

§ 3501.4 Special leasing acts.

§ 3501.4–1 Lands and deposits subject to prospecting and leases.

See subpart 3560.

§ 3501.4–2 Consent of administrator.

See subpart 3560.

Subpart 3502—Qualification Requirements

§ 3502.1 General.

Every applicant for a permit or lease must show that, with the area applied for, his or its interest or interests in

such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate the acreage limitation in § 3501.1–4.

§ 3502.1–1 Who may hold interests.

Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interests by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; including a company or corporation operating a common-carrier railroad, and to municipalities. (a) *Aliens.* Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

(b) *Minors.* A mineral lease or permit will not be issued to a minor but leases or permits may be issued to a legal guardian or trustee in his behalf. See § 3502.8.

(c) *Common carrier railroad.* Every company or corporation operating a common-carrier railroad must make a statement that it needs the coal for which it seeks a permit or lease for its own use for railroad purposes; that it operates main or branch lines in the State in which the lands involved are located; that the aggregate acreage in the permits, leases and applications therefor in which it is interested directly or indirectly does not exceed 10,240 acres; and that it does not hold more than one permit or lease for each 200 miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

§ 3502.1–2 Bona fide purchasers.

(a) *Provisions of statute.* The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86–705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) *Sale of underlying interests.* If in any proceeding to cancel or forfeit a lease, interest in a lease, option to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) *Right to dismissal.* Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(d) *Suspension.* If during any such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3502.1–3 Where filed.

(a) *Land office.* All applicants must file their statements of qualification and evidence thereto in the proper land office unless previously filed, in which event a reference by serial number to the record and the land office in which filed, together with a statement as to any amendments, will be accepted.

(b) *Exception.* If applicant is an individual he must submit with each application a statement of his citizenship. See § 3502.2–1.

§ 3502.2 Individuals.

§ 3502.2–1 Statement of citizenship.

If applicant is an individual, he must submit with each application for permit or lease a statement over his own signature setting forth the applicant's citizenship.

§ 3502.2–2 Equitable rights affecting certain coal lands in Oklahoma.

(a) *Requirements.* Prior to the act of February 25, 1920 equitable rights of persons who, prior to February 25, 1920, occupied and improved or claimed coal lands in good faith may be recognized in awarding leases of such lands.

(b) *Preference right.* A holder of a lease or permit, including a lease under temporary extensions, outstanding on May 24, 1949, covering certain coal lands or coal deposits in Oklahoma which the Choctaw and Chickasaw Nations agreed to convey to the United States in a contract ratified by the act of June 24, 1948 (62 Stat. 596), who has maintained or acted diligently to maintain the lease or permit in good standing, may obtain a lease for the same lands or deposits without competitive bidding, provided that he files an application for a lease under this part prior to the expiration date of the current lease.

§ 3502.3 Associations including partnerships.

§ 3502.3–1 Statements.

(a) If an applicant for a permit or lease is an association (including a partnership), it must submit a certified copy of the articles of association and a statement as to their citizenship and holdings as required of an individual.

(b) (1) If the offeror is an association which meets the requirements of § 3502.-1–1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (i) that it is authorized to hold leases; (ii) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (iii) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall also be furnished.

(2) If the offer is made by an association which does not meet the requirements of § 3502.1–1 of this chapter the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

§ 3502.3–2 Evidence previously filed.

Where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3502.4 **Corporations.**

§ 3502.4–1 **Statements.**

(a) If the applicant is a corporation, it must submit statements showing (1) the state in which it is incorporated; (2) that it is authorized to hold leases for mineral deposits, (3) names of the officers authorized to act in such matters in behalf of the corporation; (4) the precentage of the corporation voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and (5) the name, addresses, citizenship, and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each.

(b) Exceptions.

(1) Requirements for alien interests or persons having addresses outside of the United States. Regulations for potassium, sodium, sulphur and asphalt in Oklahoma state that if more than 10 percent of the stock is owned or controlled by or on behalf of aliens or persons who have addresses outside of the United States, additional qualifications may be required.

§ 3502.5 **Guardian or trustee.**

§ 3502.5–1 **Statements.**

(a) Where there is a legal guardian or trustee: A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3502.8.

§ 3502.5–2 **Evidence previously filed.**

Where evidence of the authority to act of a guardian, trustee, an executor or administrator, have previously been filed pursuant to the regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3502.6 **Attorney-in-fact.**

§ 3502.6–1 **Statements.**

(a) *Evidence required.* (1) All applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings unless the power of attorney specifically authorized and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations.

(2) Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument.

(3) Except in a case where an officer of a corporation signs an application on behalf of the corporation, as to which see § 3502.4 evidence of the authority of the attorney in fact to sign the application and permit, if the application is signed by such attorney on behalf of the applicant.

§ 3502.6–2 **Evidence previously filed.**

Where such power of attorney has been filed in the same land office where the application is filed reference thereto by serial number of the record in which it has been filed may be made upon the filing of subsequent applications.

§ 3502.7 **Showing as to sole party in interest.**

Every applicant for lease or permit must submit at the time of filing a signed statement that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other interested parties in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

§ 3502.8 **Heirs and devisees (estates).**

§ 3502.8–1 **General.**

If an applicant for a permit, an applicant for a preference right lease, or a successful bidder to a competitive lease dies before the permit or lease is issued, the permit or lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(a) *Probate not completed.* Where probate of the estate has not been completed:

(1) *Evidence to sign.* Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(2) *Evidence of heirship.* Evidence that the heirs or devisees are the heirs or devisees of the deceased permittees and are the only heirs or devisees of the deceased.

(3) *Evidence as to citizenship and holdings.* A statement over the signature of each heir or devisee concerning citzenship and holdings similar to that required by §§ 3502.1 and 3502.2–1.

(b) *Probate proceedings not required.* Where the executor or administrator has been discharged or no probate proceedings are required.

(1) Evidence of will or decree of distrbiuton. A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittees and citing the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by §§ 3502.1 and 3502.2–1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3502.9 **Municipality.**

§ 3502.9–1 **Coal.**

(a) Evidence required. A municipality must submit evidence of: (1) The manner in which it is organized; (2) that it is authorized to hold a permit or lease; and (3) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

Subpart 3503—Fees, Rentals, and Royalties

§ 3503.0–3 **Authorities.**

Fees—Act of August 31, 1951 (5 U.S.C. 140). Rentals see § 3500.0–3.

§ 3503.1 **Payments.**

§ 3503.1–1 **Form of remittance.**

Remittances must be submitted as cash, money order, check, certified check, bank draft or bank cashier's check.

§ 3503.1–2 **Where remitted.**

(a) *Proper land office.* Unless otherwise directed by the Secretary, rentals under all leases and permits issued under the act shall be paid to the Manager of the appropriate Land Office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) *Geological Survey.* Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the U.S. Geological Survey.

§ 3503.1–3 **When remitted.**

First year rental must be remitted at the time of filing applications for prospecting permits and preference right leases. First year rental for competitive leases will be required by decision. Thereafter, rental for all prospecting permits and leases will be required in accordance with permit and lease provisions. Applications for extension of permits must be accompanied by annual rental payment.

§ 3503.2 **Fees.**

§ 3503.2–1 **General statement.**

Applications for prospecting permits, leases or licenses, extension of permits,

renewals, modifications, and for approval of any instrument transferring a lease or permit or interest therein, must be accompanied by a filing fee of $10 for each application. Such a fee will be retained as a service charge even though an application should be rejected or withdrawn in whole or in part. An application not accompanied by the filing fee will not be accepted.

§ 3503.2–2 Exceptions.

(a) No filing fee required for coal licenses to relief agencies.

(b) Preference right lease applications.

§ 3503.3 Rentals and royalties.

§ 3503.3–1 General statement rentals.

(a) *Permits (Prospecting).* A prospecting permit application must be accompanied by full payment of the first year's rental at the rate of 25 cents per acre or fraction thereof, but no less than $20 per year, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. Thereafter, payment of the annual rental shall be made on or before the anniversary date of the permit.

(b) *Leases*—(1) *Coal.* Annual rental per acre or fraction thereof for coal leases shall be not less than 25 cents for the first year, not less than 50 cents for the second, third, fourth, and fifth years, and not less than $1 for each and every year thereafter during the continuance of the lease. The rental paid for any year shall be credited against the royalties for that year.

(2) *Phosphate.* Annual rental for phosphate leases shall be not less than 25 cents per acre or fraction thereof for the first year, not less than 50 cents for the second and third years, and not less than $1 for each and every year thereafter during the continuance of the lease. The rental paid for any year shall be credited against the royalties for that year.

(3) *Potassium and sodium.* Rental for potassium and sodium leases is 25 cents per acre or fraction thereof for the first calendar year or fraction thereof. Rental for succeeding years is payable on or before January 1, the beginning of the calendar year. Annual rental per acre or fraction thereof is 50 cents for the second, third, fourth, and fifth years, and $1 for the sixth and each succeeding year during the continuance of the lease. The rental for any year will be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(4) *Sulphur.* Sulphur leases shall provide for payment, in advance, of an annual rental of 50 cents for each acre or part thereof covered by the lease, beginning with the date of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

(5) *Asphalt.* The annual rental will be 50 cents per acre or fraction thereof payable annually in advance.

(6) *Solid (hardrock) minerals.* An application for preference right lease must be accompanied by a rental payment of $1 for each acre or fraction thereof included in the application, but not less than $20. In no event shall the first year's rental on any lease be less than $20.

(c) *Use permits.* The annual rental for a sodium or phosphate use permit will be not less than $1 per acre or fraction thereof.

(d) *Licenses.* No rental payment required.

§ 3503.3–2 General statement royalties.

(a) *Royalty on production.* Royalty rates will be determined on an individual case basis prior to lease issuanue. Such rates will be set out in the notice of competitive lease offer.

(1) *Exceptions*—(i) *Sulphur.* Leases based upon discovery of valuable sulphur deposits under a sulphur permit shall provide for a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market. Leases for lands known to contain valuable deposits of sulphur and not covered by sulphur permits or leases shall provide for such royalty as will be determined prior to the issuance of the lease, but in no case shall the royalty be less than 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

(ii) *Solid (hardrock) minerals.* The terms and conditions of the lease, including the royalty rates, will be established on an individual case basis. If minerals other than that specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate will be established by the lessor for such mineral.

(b) *Minimum royalty*—(1) Coal. Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the sixth year of the lease, except when operation is interrupted by strikes, the elements, or casualties not attributable to the lessee, unless, on application and showing made, operations shall be suspended when market conditions are such that the lease cannot be operated except at a loss or for the other reasons specified in section 39 of the act (see sec. 3503.3–2(e)). Operations under the lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on the minimum production for one year in advance, in which case operations may be suspended for that year.

(i) *Exception.* (*a*) *Certain coal lands in Oklahoma.* In the case of an award of a lease to a qualified person the royalties will be established at rates not less than the minimum provided for leases under the act.

(2) *Potassium, sodium and sulphur.* Leases will require the payment of a royalty on a minimum annual production beginning with the sixth full calendar lease year, unless operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless, on application and showing made, lease operations are suspended by the Department of the Interior for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(3) *Phosphate.* (i) *Minimum production.* Each lease will contain appropriate conditions fixing a minimum annual production of the leased deposits beginning with the fourth year from date thereof or payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, casualties not attributable to the lessee, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss. When authorized in the lease the minimum production requirements may be satisfied by production from other properties controlled by the lessee and constituting a necessary reserve so located as to be a part of a successful unit operation.

(ii) *Lessee's petition for change in minimum production.* The lessee may request at any time prior to the end of the thirtieth lease month, that the Secretary reduce the amount of the minimum production specified in the lease upon the basis of the showing submitted by the lessee. The petition must be filed in duplicate with the office from which his lease was delivered. It should give, among other relevant information, (a) his estimate of tonnage of mineral phosphate rock and associated or related minerals in the leased land, (b) all available information as to the grade thereof, (c) his plan of operation for the property and adjacent property to be worked therewith, (d) a general statement of the method or methods which he intends to use in mining and processing of the phosphate rock and associated or related minerals, (e) the estimated rate of its extraction and (f) possible absorption in the markets. Within 6 months after receipt of this information the authorized officer, after considering what would be a reasonable period within which to mine the leased deposits taking into account, where material, the lessee's mining operations on adjacent phosphate land owned or controlled by him, will determine whether the minimum production requirement in the lease shall be changed to a lesser figure than the amount then provided.

(c) *Limitation of overriding royalties.* (1) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the

holders thereof or in the absence of such argeement, in the inverse order of the dates of creation of such interests.

(2) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (1) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary.

(3) *Exceptions.* (i) *Coal.* An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he had made substantial investments for improvements on the land covered by the assignment.

(ii) *Phosphate.* An overriding royalty interest shall not be created by assignment or otherwise exceeding one percent of the gross value of the output at point of shipment to market or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the authorized officer that he has made substantial investments for improvements on the land covered by the assignment.

(d) *Waiver, suspension, or reduction of rental or minimum royalty.* (1) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the mining supervisor for coal, phosphate, potassium, sodium, and sulphur leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(i) Each application involving coal, phosphate, potassium, sodium and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average porduction per day mined for each month and complete information as to why the minimum production was not attained.

(ii) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them.

(iii) The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to aggregate not in excess of one-half the Government royalties.

(e) *Suspension of operations and production.* (1) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the Regional Mining Supervisor for all leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the Regional Mining Supervisor is authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

(2) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(3) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(4) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(5) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation.

(6) *Exceptions.* (i) *Solid (hardrock) minerals.* (a) Upon a showing of the need and upon application therefor, filed in triplicate in the office of the Regional Mining Supervisor and a copy filed in the proper land office, the lessee may be granted a suspension of the operating and/or producing requirements of the lease. A rental in lieu of royalty of not less than $1 per acre shall be paid annually during the period of suspension. The period of suspension shall be specified in an appropriate order of the Secretary or his authorized representative.

(b) Notwithstanding the provisions of the preceding paragraph, the Secretary, in the interest of conservation of natural resources, may suspend all operating and producing requirements and waive, suspend, or reduce the rental or minimum royalty.

Subpart 3504—Bonds

§ 3504.1 General.

§ 3504.1–1 Statement.

Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 3504.3 may be furnished for the protection of the entryman or owner of surface rights.

§ 3504.1–2 Special acts.

(a) *Gold and silver in confirmed private land grants.* A bond with approved corporate surety in the sum of $2,000 will be required as a guarantee to the making of the investment fixed in the lease and compliance with the other terms and conditions thereof, but a larger bond may be fixed if that amount is determined to be inadequate for the purpose for which given.

(b) *Asphalt in Oklahoma.* A compliance bond in no event less than $1,000 will be required prior to issuance of the lease and compliance with § 3504.2–1(b).

(c) *Nevada*—(1) *Silica sands and other nonmetallic minerals in certain areas in Nevada.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease.

(2) *Sand and gravel in certain lands patented to the State.* The applicant will be required prior to issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease, and for the protection of the owner of the surface estate from damages resulting from the operation of such lessee.

(d) *Reserved minerals in lands patented to the State of California for park or other public purposes.* Each lessee will be required to furnish a bond in such sum as may be determined adequate, in no case less than $1,000, to insure compliance with the terms of the lease and for the protection of the surface owner.

(e) *Certain national forest lands in Minnesota.* There must be filed a bond in

compliance with § 3504.2–1(a)(1) for permits; and § 3504.2–1(b) for leases.

(f) *Lease for minerals on lands withdrawn for reclamation purposes within Lake Mead Recreation area.* There must be filed a bond in compliance with § 3504.2–1(b) for leases.

(g) *Prospecting and mineral leasing within National Forest Wilderness.* There must be filed a bond in compliance with § 3504.2–1(a)(1) for permits; and § 3504.2–1(b) for leases.

(h) *Development of minerals in lands within Whiskeytown-Shasta-Trinity national recreation area.* There must be filed a bond in compliance with § 3504.2–1(a)(1) for permits; and § 3504.2–1(b) for leases.

§ 3504.2 Type of bond.

§ 3504.2–1 Compliance bonds.

(a) *Permit bond*—(1) *Amount.* The applicant must furnish a bond conditioned upon compliance with all terms of the prospecting permit on all permits issued pursuant to applications filed under this section. The bond shall be in the amount determined by the authorized officer, but not for less than $1,000.

(2) *Exception*—(i) *Solid (Hardrock) minerals.* The permittee may also be required, as condition precedent to the issuance of a permit, to furnish a permit bond.

(b) *Lease bond*—(1) *Amount.* A bond conditioned upon compliance with all the provisions of the lease must be furnished on all leases issued. The bond shall be in the amount determined by the authorized officer but in no event less than $5,000 for potassium, sodium, phosphate and sulphur leases; not less than $1,000 for coal leases; and not less than $500 for solid (hardrock) mineral leases. The right is reserved to increase the amount of the bond when deemed proper by the authorized officer.

§ 3504.2–2 Where filed and copies.

Bonds must be filed in the proper land office in a single original copy.

§ 3504.2–3 When filed.

Permit bonds may be filed with an application which will expedite action thereon; or bonds may be filed within 30 days after receipt of notice by the applicant of the bond requirement.

§ 3504.2–4 Form of bond.

Bonds will be furnished on a form approved by the Director.

§ 3504.2–5 Termination of period of liability.

The period of liability of any bond will not be terminated until all terms and conditions in the permit or lease have been fulfilled.

§ 3504.3 Individual sureties.

§ 3504.3–1 Net worth statement.

Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the U.S. Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located.

§ 3504.3–2 Certificate required.

There also must be furnished a certificate by a judge or clerk of a court of record, a U.S. Attorney, a U.S. Commissioner, or a U.S. Postmaster, as to the identity, signature, and financial competency of the sureties.

§ 3504.3–3 Requirements.

All bonds furnished with individual sureties will be examined every 2 years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required.

§ 3504.3–4 Terms.

Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations.

§ 3504.3–5 Forms.

The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

§ 3504.4 Corporate bond or personal bond.

§ 3504.4–1 Amount.

To be determined by the authorized officer after consultation with the Mining Supervisor.

(a) Compliance with § 3504.2–1(a)(1) for permits.

(b) Compliance with § 3504.2–1(b) for leases.

(1) *Corporate surety bond.* (i) A corporate surety bond may be filed for a prospecting permit or lease.

(2) *Personal bond*—(i) *Type of bond.* In lieu of a corporate surety bond, a personal prospecting permit or lease bond may be filed.

(ii) *Deposit of securities.* Personal prospecting permit or lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required surety bond, together with a power of attorney may be executed on a form approved by the Director.

§ 3504.4–2 Qualified sureties.

(a) *Treasury lists.* A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of Congress, approved July 30, 1947 (6 U.S.C. 6–13) as acceptable sureties on Federal bonds is published in the FEDERAL REGISTER annually.

§ 3504.5 Nationwide bonds.

§ 3504.5–1 Amount.

Lessee may furnish for coal, potassium, sodium, or phosphate a separate bond in the amount of $75,000 for full nationwide coverage of all leases and permits issued for the respective mineral pursuant to the Mineral Leasing Acts, and also pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351–359).

§ 3504.6 Statewide bond.

§ 3504.6–1 Amount.

Lessee may furnish for coal, potassium, sodium, or phosphate for each state in which the lessee holds leases or permits separate statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part in that State for the respective mineral.

§ 3504.7 Collective bond.

§ 3504.7–1 Amount.

Lessee may furnish for coal, potassium, sodium, or phosphate a collective bond in an amount not less than the total minimum coverage required if separate bonds on each lease were furnished.

§ 3504.8 Default.

§ 3504.8–1 Payment of surety.

Where upon a default, the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3504.8–2 Penalty.

Thereafter upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $75,000, a new statewide bond in the amount of $25,000 or a new collective bond as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix.

§ 3504.8–3 Relief.

However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3504.8–4 Applicability of provisions to existing bonds.

The provisions hereof may be made applicable to any nationwide, statewide or collective bond in force at the time of the approval of the amendment of this paragraph by filing in the appropriate land office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ 3504.9 Exploration bond.

§ 3504.9–1 See 43 CFR Part 23.

Subpart 3505—Cooperative Conservation Provisions

§ 3505.1 General.

§ 3505.1–1 Coal fields or prospective areas.

To conserve the natural resources of any coal field or prospective coal area, or any part or zone thereof, and to permit an orderly, efficient and economic development of such coal fields, the act authorizes the Secretary of the Interior to approve cooperative agreements among lessees or permittees and their representatives if such agreements or

contracts are certified by the Secretary to be necessary or advisable in the public interest. It also permits him to enter into a development contract with a single lessee and to consolidate the leases or permits of one or more lessees or permittees.

§ 3505.1–2 Solid (hardrock) minerals.

The Secretary of the Interior or his authorized representative may approve operating or development contracts or processing or milling arrangements for the conservation of natural products or whenever in his discretion, the public convenience or necessity may require it or the interests of the United States may be best served thereby.

§ 3505.2 Coal.

§ 3505.2–1 Types of contracts.

(a) *Collective contracts.* The Secretary may approve collective contracts of lessees and permittees and their representatives and others, for prospecting, development or operation of coal fields or prospective coal areas, or any part or zone thereof.

(b) *Development contracts.* The Secretary may enter into a development contract with a single lessee or permittee embracing his leases or permits.

(c) *Consolidation of leases and permits.* The Secretary may consolidate separate Federal permits or leases of one or more lessees or permittees into a lesser number of permits or leases, or into a single permit or lease.

§ 3505.2–2 Application.

(a) *Where filed and copies.* A contract submitted for approval must be filed in the proper land office with enough copies to permit retention of five copies after approval.

(b) *Showing required.* The application must be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field must be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and to prescribe the conditions on which approval of the contracts is made.

(c) *Common carrier railroads.* Any company or corporation operating a common-carrier railroad which may be a party to a collective contract or development contract with a Federal lessee under this subpart, to develop its own lands, excluding Federal lands leased by the railroad, in connection with or in cooperation with a Federal lessee or lessees shall not be deemed to be given or hold a lease by virtue of any such arrangement between the working interest owners.

§ 3505.2–3 Special provisions.

(a) *Production and royalties.* A contract approved hereunder shall not provide for an apportionment of production or royalties among the separate tracts comprising the contract area, but may provide for the commingling of production with appropriate allocation to the tracts from which produced. In connection with any contract approved or executed or with any consolidation accomplished under this subpart, the authorized officer may, with the consent of the party or parties involved, establish, alter, change, or revoke mining, producing, rental, minimum royalty, and royalty requirements of such leases or permits or contracts.

(b) *Working interest contracts.* In the case of any contract between lessees or their representatives, or between them and others for collective development or operation of any coal field or coal area, or any part or zone thereof, such arrangement as the working interest owners may enter into for the sharing or division of production among them shall not be deemed to be an apportionment of production or royalties among the separate tracts comprising the contract area.

§ 3505.2–4 Approval.

(a) *Approval of contract.* A contract pursuant to the provisions of this section will be approved or executed by the Secretary.

(b) *Exemption from acreage limitations.* Coal leases and permits operated under a contract pursuant to the provisions of this section may be excepted from acreage limitations or maximum holdings or control imposed by the Act, if it is determined that such exception is required to permit economic development of the resources and is otherwise consistent with the public interest.

§ 3505.3 Solid (Hardrock) minerals.

§ 3505.3–1 Types of contracts.

(a) *Operating or development contract.* The Secretary of the Interior or his authorized representative may approve operating or development contracts, or processing or milling arrangements, made by one or more lessees with one or more persons, associations, or corporations, to justify operations on a large scale for the discovery, development, production or transportation of ores.

§ 3505.3–2 Application.

(a) *Where filed and copies.* An application must be filed in the proper land office in three executed copies, and a duplicate original must be filed with the Regional Mining Supervisor of the Geological Survey. All of the contracts held by the same contractor, in the area, should be submitted at the same time and full disclosure of the project made.

(b) *Showing required.* The contract must be accompanied by a statement showing all of the interests held by the contractor designated in the contract in the area, and also the agreed or the proposed plan of operation or development of the leased lands.

§ 3505.3–3 Approval.

(a) *Approval of contract.* Contracts may, by and with concurrence of the Geological Survey and on such conditions as may be subscribed, be approved by the Secretary or his authorized representative.

(b) *Exemption from acreage limitations.* Operating or development contracts may be approved regardless of acreage limitations provided in § 3501.2–5.

Subpart 3506—Assignments or Transfers and Subleases

§ 3506.1 Qualifications.

§ 3506.1–1 Who may file.

Permits and leases may be transferred in whole or in part to any person, association, or corporation qualified to hold such leases and permits.

(a) *Minors.* A minor is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(1) *Exception.* An assignment in behalf of a minor heir or devisee of a permittee or lessee to his legal guardian or trustee may be approved.

§ 3506.1–2 Failure to qualify.

No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient.

§ 3506.1–3 Number of copies required.

A single executed copy of qualifications is sufficient.

§ 3506.1–4 Sole party in interest.

Compliance with § 3502.7.

§ 3506.1–5 Attorney-in-fact.

Compliance with § 3502.6.

§ 3506.1–6 Heirs and devisees.

In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3502.8.

§ 3506.2 Requirements.

§ 3506.2–1 Where filed.

An application for approval of an assignment or transfer must be filed in the proper land office as specified in § 3000.5–1.

§ 3506.2–2 Forms and statements.

(a) *Record title; copies required.* Assignments or transfers of record title interest must be filed in triplicate.

(1) *Approved form.* There is no specific form which must be used for assignment transfers or requests for approval thereof. The application must contain evidence of qualifications of the assignee or transferee consisting of the same showing required of a lease or permit applicant as set forth in qualifications subpart 3502.

(2) *Separate instruments required.* A separate instrument of assignment or transfer must be filed for each permit or lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one permit or lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee or transferee will be sufficient.

(b) *Other than record; title; copies required.* A single executed copy of all other instruments of transfer is sufficient.

§ 3506.2–3 Bonds.

(a) *Coverage.* If a bond is necessary it must be furnished before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred.

(b) *Continuing responsibility.* The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The account under the permit or lease must be in good standing before approval of a transfer will be given.

§ 3506.2–4 Permit or lease account status.

The account under the permit or lease must be in good standing before approval of a transfer will be given.

§ 3506.2–5 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the permit or lease or in the manner required by § 3501.1–3.

(a) *Effect of assignments.* The approval of transfer of only a part of the lands described in a permit or lease will create a new permit or lease which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other.

§ 3506.3 Approval.

§ 3506.3–1 Application.

Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval within 30 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by subpart 3502.

§ 3506.3–2 Effective date.

A transfer will take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

§ 3506.4 Royalty interests.

Transfer of royalty interests must be filed within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by subpart 3502.

§ 3506.5 Extensions.

The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease.

Subpart 3509—Surface Management

§ 3509 Surface management.

§ 3509.1 See 43 CFR Part 23.

This circular replaces Circulars 1917, 1967, 1968, 2082, 2154, 2155, 2156, 2157, 2219, 2223, 2229, 2230, 2250, 2252, and 2283.

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REGULATIONS PERTAINING TO

RIGHTS-OF-WAY

Rights-of-Way, Principles and Procedures

43 CFR 2800

Circular No. 2322

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REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

Rights-of-Way, Principles and Procedures

43 CFR 2800

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

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Subpart 2800—Rights-of-way, General

§ 2800.0–1 Purpose.

(a) This part applies to all rights-of-way covered by §§ 2800.0–1 and 2800.0–5, subparts 2801 and 2802, §§ 2810.0–3, 2810.0–5, subparts 2811, 2821, 2881, 2882, and parts 2850, 2860, 2870, and 2890.

(b) This does not apply to the obtaining of rights-of-way by Federal agencies over unreserved, or withdrawn, or reserved public domain lands. Such rights-of-way may be appropriated under the principles of the instructions of January 13, 1916 (44 L.D. 513), with the consent of the agency having jurisdiction or control over the land.

(c) All general right-of-way laws, and the regulations thereunder contained in this subpart, are applicable to Alaska. (See sec. 3 of the act of August 24, 1912 (37 Stat. 512; 48 U.S.C. 23), and 30 Op. Atty. Gen. 387 (1915.)

§ 2800.0–5 Definitions.

(a) "Secretary" means the Secretary of Transportation.

(b) "Director" means the Director, Bureau of Land Management.

(c) "State Director" means State Director of the Bureau of Land Management, or his authorized representative.

(d) "Manager" means manager of the land office for the district in which the lands applied for are situated (see § 1821.2–1 of this chapter).

(e) "Project" means the physical structures in connection with which the right-of-way is approved.

(f) "Construction work" means any and all work, whether of a temporary or permanent nature, done in the construction of the project.

(g) "Superintendent in charge" means the officer of the United States having supervision of the land under authority of the agency having jurisdiction and control over the land involved.

(h) "Reservation lands" includes national parks and monuments, or any other reservations of the United States for the use of or administration by the National Park Service, the Fish and Wildlife Service, the Bureau of Reclamation, or any agency outside the Department of Transportation.

(i) "Right-of-way" includes license, permit, or easement, as the case may be, and, where applicable, includes "site".

Subpart 2801—Nature of Interest

§ 2801.1 Nature of interest granted; settlement on right-of-way; rights of ingress and egress.

§ 2801.1–1 In form of easement, license, or permit.

No interest granted by the regulations in this part shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license, or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise. Unless a specific statute or regulation provides otherwise, no interest granted shall give the grantee any right whatever to take from the public lands or reservations any material, earth, or stone for construction or other purpose, but stone and earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

§ 2801.1–2 Disposals subject to right-of-way.

All persons entering or otherwise appropriating a tract of public land, to part of which a right-of-way has attached under the regulations in this part, take the land subject to such right-of-way and without deduction of the area included in the right-of-way.

§ 2801.1–3 Right of ingress and egress to a primary right-of-way.

In order to facilitate the use of a right-of-way granted or applied for under the regulations of this part, the authorized officer may grant to the holder of or applicant for such right-of-way an additional right-of-way for ingress and egress to the primary right-of-way, including the right to construct, operate, and maintain such facilities as may be necessary for ingress and egress. The holder or applicant may obtain such additional right-of-way only over lands for which the authorized officer has authority to grant a right-of-way of the type represented by the primary right-of-way held or requested by the applicant. He must comply with the same provisions of the regulations applicable to his primary right-of-way with respect to the form of and place of filing his application for an additional right-of-way, the filing of maps and other information, and the payment of rental charges for the use of the additional right-of-way. He must also present satisfactory evidence that the additional right-of-way is reasonably necessary for the use, operation, or maintenance of the primary right-of-way.

§ 2801.1–4 Right to occupy land and commence construction.

(a) *Advance permission.* (1) Permission to commence construction work over and through lands under the jurisdiction of the Department of the Interior or of its agencies and to use and occupy such lands in advance of the approval of a right-of-way may be granted by the manager upon a satisfactory showing of the necessity for such action and upon a determination, after the request for permission has been cleared by all interested agencies of the Department, that such action is compatible with the public interest. Requests for such advance authority need not meet the formal requirements of § 2802.1 to § 2802.1–4 and may be filed with the agency having supervision of the land involved, in which case a duplicate request must be filed in the office specified in § 2802.1.

(2) Any grant of advance permission is solely for the convenience of the applicant and is not a commitment by the Department that a right-of-way will be approved. The Department's authority in acting on a right-of-way application is not restricted in any way by the grant of advance permission or any requirements laid down in such grant of permission and the Department may impose additional or different requirements, within the scope of the applicable statute and lawful regulations thereunder, as conditions precedent to the approval of the right-of-way. A grant of advance permission is revocable at will, and the grantee assumes all the risk of operating under such permission.

(b) *Unauthorized occupancy.* Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

§ 2801.1–5 Terms and conditions.

An applicant, by accepting a right-of-way, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(a) To comply with State and Federal laws applicable to the project for which the right-of-way is approved, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(b) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the superintendent in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such manner as to decrease the fire hazard and also in accordance with such instructions as the superintendent in charge may specify.

(c) To take such soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way as the superintendent in charge of such lands may request.

(d) To do everything reasonably within his power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(e) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(f) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the right-of-way, except that where a right-of-way is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(g) To notify promptly the superintendent in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States through such superintendent in advance of construction such sum of money as such superintendent may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(h) To comply with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the agency having supervision of the lands to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

(i) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing, he shall, so far as it is reasonably possible to do so, restore the land to its original condition to the entire satisfaction of the superintendent in charge.

(j) That he shall at all times keep the manager informed of his address, and, in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(l) That the allowance of the right-of-way shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the lands affected thereby, and that he agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization thereof, for necessary operations incident to such management, administration, or disposal.

(m) That the right-of-way herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.

§ 2801.1–6 Proposed or existing national forest.

Whenever a right-of-way is sought through or in national forest lands, or any area withdrawn for inclusion within a national forest, the applicant must enter into such stipulations and execute such bond as the Forest Service may require for the protection of such existing or proposed national forest.

§ 2801.1–7 Areas of National Park System.

(a) The act of March 3, 1921 (41 Stat. 1353; 16 U.S.C. 797), provides that no right-of-way for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power within the limits as then constituted of any national park or monument, shall be approved without specific authority of Congress.

(b) Pursuant to any statute, including those listed in this subpart, applicable to reservation lands administered by the National Park Service, rights-of-way over or through such lands will be issued by the Director of the National Park Service, or his delegate, under the regulations of this subpart.

§ 2801.1–8 Oregon and California Railroad and Coos Bay Wagon Road grant lands.

(a) All applications for rights-of-way for the construction and operation of any project over Oregon and California Railroad lands, title to which was revested in the United States by the act of June 9, 1916 (39 Stat. 218), and reconveyed Coos Bay Wagon Road lands, act of February 26, 1919 (40 Stat. 1179), must also be accompanied by a statement showing the amount of merchantable timber, if any, to be cut, removed, or destroyed in the construction of the project works, and agreeing to deposit with the Bureau, in advance of construction, such sum of money as may be determined to be the full stumpage value of the timber to be so cut, removed, or destroyed, and an affirmative showing that favorable action on the application will not adversely affect or impair watershed protection, streamflow regulation, and other conservation features enumerated in the act of August 28, 1937 (50 Stat. 874).

(b) The general right-of-way statutes were extended to these lands by sec. 2 of the act of June 9, 1916 (39 Stat. 218), and sec. 3 of the act of February 26, 1919 (40 Stat. 1179).

§ 2801.1–9 Areas administered by Fish and Wildlife Service.

Pursuant to any statute, including those listed in this subpart, applicable to reservation lands administered by the Fish and Wildlife Service, rights-of-way over or through such lands will be issued by the Director of the Bureau of Sport Fisheries and Wildlife, or his delegate, under the regulations in 50 CFR Part 29.

Subpart 2802—Procedures

§ 2802.1 Application.

§ 2802.1–1 Form.

(a) *Application.* (1) The application shall be prepared and submitted in accordance with the requirements of this section. It should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purpose for which the right-of-way is to be used. Applications shall be filed in accordance with the provisions of § 1821.2 of this chapter, except that applications for rights-of-way over or through reservation lands administered by the National Park Service shall be

filed with the Director of the National Park Service, Washington, D.C. 20240, and applications for rights-of-way over and through reservation lands administered by the Fish and Wildlife Service shall be filed with the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife in accordance with 50 CFR 29.21–2. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

§ 2802.1–2 Service fees.

All applications filed pursuant to this part in the name of individuals, corporations or associations must be accompanied by an application service fee of $10 except where the right of way will authorize use and occupancy of the lands exclusively for the purposes stated in § 2802.1–6(c). The service fee will not be returnable. No application service fee will be required of States or agencies or instrumentalities thereof or of Government agencies.

§ 2802.1–3 Showing as to organizations required of corporations.

(a) An application by a private corporation must be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized.

(b) A corporation, other than a private corporation, should file a copy of the law under which it was formed and due proof of organization under the same.

(c) When a corporation is operating in a State other than that in which it was incorporated, it must submit a certificate of the Secretary of State or other proper official of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(d) A copy of the resolution or bylaws of the corporation authorizing the filing of the application must also be filed.

(e) If the corporation shall have previously filed with the Bureau the papers required by this section, the requirements shall be held to be met if, in making subsequent applications, specific reference is made to such previous filing by date, place, and case number.

§ 2802.1–4 Showing as to citizenship required.

(a) *Individuals.* An individual applicant applying for a right-of-way under any right-of-way act, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946 et seq.), and the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), as amended, must state whether he is native born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known. If citizenship is claimed by virtue of naturalization of the father, evidence of his naturalization, and that the applicant resided in the United States thereafter while a minor, should be furnished. Where the husband and the wife are native born and a statement to that effect is made, additional information as to the marital status is not required. In other cases, a married woman or widow must show the date of her marriage; a widow must show, in addition, the date of the death of her husband.

(b) *Association of Individuals.* An application by an association, including a partnership, must be accompanied by a certified copy of the articles of association, if any; if there be none, the application must be made over the signature of each member of the association. Each member must furnish evidence of citizenship where it would be required if he were applying individually.

§ 2802.1–5 Documents which must accompany application.

(a) *Maps.* Each application, other than a reservoir declaratory statement under § 2872.1(a), or an appropriation for Federal-aid highway purposes under Title 23, United States Code, section 317, must be accompanied by a map prepared on tracing linen, or on tracing paper having a 100 percent rag content, and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

(1) The scale should be 2,000 feet to the inch for rights-of-way for such structures as canals, ditches, pipelines, and transmission lines and 1,000 feet to the inch for rights-of-way for reservoirs, except where a larger scale is required to represent properly the details of the proposed developments, in which case the scales should be 1,000 feet to the inch and 500 feet to the inch, respectively. For electric transmission lines having a nominal voltage of less than 33 kv. map scales may at option of the applicant be 5,280 feet to the inch.

(2) Courses and distances of the center line of the right-of-way or traverse line of the reservoir should be given; the courses referred to the true meridian either by deflection from a line of known bearing or by independent observation, and the distances in feet and decimals thereof. Station numbers with plus distances at deflection points on the traverse line should be shown.

(3) The initial and terminal points of the survey should be accurately connected by course and distance to the nearest corner of the public-land surveys, unless that corner is more than 6 miles distant, in which case the connection will be made to some prominent natural object or permanent monument, which can be readily recognized and recovered. The station number and plus distance to the point of intersection with a line of the public-land surveys should be ascertained and noted, together with

the course and distance along the section line to the nearest existing corner, at a sufficient number of points throughout the township to permit accurate platting of the relative position of the right-of-way to the public-land survey.

(4) If the right-of-way is across or within reservation lands which are not covered by the public-land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public-land surveys.

(5) All subdivisions of the public-land surveys within the limits of the survey should be shown in their entirety, based upon the official subsisting plats, with the subdivisions, section, township, and range clearly marked.

(6) The width of the canal, ditch, or lateral at high-water line should be given and the width of all other rights-of-way shall be given. If the width is not uniform, the location and amount of the change in width must be definitely shown. In the case of a pipeline, the diameter of the line should be given. For reservoirs, the capacity in acre-feet, the area within the high-water line, the source of the water supply, and the location and height of the dam must be shown. The total distance of the right-of-way on the Federal lands shall be stated. In the case of a reservoir or other site, the total acreage shall be stated.

(7) Each copy of the map should bear upon its face a statement of the engineer who made the survey and the certificate of the applicant. The statement and certificate referred to are embodied in Forms 1 and 2 (Appendix B) which are made a part hereof and which should be modified so as to be appropriate to the act invoked and the nature of the project.

(8) Whenever it is found that a public land survey monument or reservation boundary monument will be destroyed or rendered inaccessible by reason of the proposed development, at least two permanent marked witness monuments should be established at suitable points, preferably on the surveyed lines. A brief description of the witness monuments and the connecting courses and distances to the original corners should be shown.

(b) *Evidence of water right.* If the project involves the storage, diversion, or conveyance of water, the applicant must file a statement of the proper State official, or other evidence, showing that he has a right to the use of the water. Where the State official requires an applicant to obtain a right-of-way as a prerequisite to the issuance of evidence of a water right, if all else be regular, a right-of-way may be granted conditioned only upon the applicant's filing the required evidence of water right from the State official within a specified reasonable time. The conditional right-of-way will terminate at the expiration of the time allowed.

§ 2802.1–6 Indian lands.

The Bureau of Indian Affairs has jurisdiction over applications for rights-of-way over and upon Indian lands. All applications for the use and occupancy of Indian lands for right-of-way purposes should, therefore, be filed with the Superintendent of the Indian Agency or other superintendent in charge of the reservation on which the lands involved are situated, in accordance with the regulations contained in 25 CFR Part 161.

§ 2802.1–7 Payment required; exceptions; default; revision of charges.

(a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: *Provided,* That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than $25. The amount to be so returned will be the difference between the total payments made and the value of the expired portion of the term calculated on the same basis as the original payments.

(b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than $25 per five-year period for any permit, right-of-way, or easement issued.

(c) No charge will be made for the use and occupancy of lands under the regulations of this part:

(1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or nonprofit or Rural Electrification Administration projects, or where the use is by a Federal governmental agency.

(2) Where the permit, right-of-way, or easement is granted under the regulations in §§ 2821, 2822, 2842, 2871, 2872.

(d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way or easement. After default has occurred, no structures, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer.

(e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year.

(f) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department.

§ 2802.2 Approval of right-of-way.

§ 2802.2–1 Completed application and reports.

(a) Where an application is complete and in conformity with the law and regulations and all required reports have been obtained and it is determined that the approval of the right-of-way will not be contrary to the public interest, including that of the Government, the manager will approve the right-of-way.

(b) An application which does not conform with the law or regulations under which filed or the approval of which would be inconsistent with the public or Government interest, will be rejected.

(c) Where the land over which the right-of-way is sought is withdrawn or reserved for the use of another Federal agency, the manager is required to clear the application with such agency.

§ 2802.2–2 Use of right-of-way.

A period of 5 years from the date of the approval of the right-of-way is usually allowed for construction unless a different period is provided by statute. Upon completion of construction, proof thereof should be submitted to the manager, consisting of a statement and certificate furnished by the holder of the right-of-way. The statement and certificate are embodied in Forms 5 and 6, Appendix B, which should be modified so as to be appropriate to the act and to the nature of the project. If, in construction, a substantial deviation from the location shown on the original map is planned or made, the party in interest must file a duly executed relinquishment of the unused portion of the right-of-way accompanied by a map of amended location of the right-of-way for the project as actually constructed. The map of amended location must be prepared in accordance with § 2802.1–5(a) and must be filed before or as soon as possible after the deviation is made. The relinquishment may be prepared so as to become effective upon approval of the amended location. Any deviation made prior to such approval will be at the risk of the applicant.

§ 2802.2–3 Nonconstruction, abandonment or nonuse.

Unless otherwise provided by law, rights-of-way are subject to cancellation by the authorized officer for failure to construct within the period allowed and for abandonment or nonuse.

§ 2802.3 Revocation or cancellation.

§ 2802.3–1 Order of cancellation.

All rights-of-way approved pursuant to this part, except those granted for pipelines pursuant to section 28 of the Act of February 25, 1920, as amended August 21, 1935 (49 Stat. 678; 30 U.S.C. 185), shall be subject to cancellation for the violation of any of the provisions of this part applicable thereto or for the violation of the terms or conditions of the right-of-way. No right-of-way shall be deemed to be canceled except on the issuance of a specific order of cancellation.

§ 2802.3–2 Change in jurisdiction over or disposal of lands.

(a) A change of jurisdiction over the lands from one Federal agency to another will not cancel a right-of-way involving such lands. It will, however, change the administrative jurisdiction over the right-of-way.

(b) The final disposal by the United States of any tract traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or part, but such final disposition shall be deemed and taken to be subject to such right-of-way until it is specifically canceled.

§ 2802.4 Transfer of right-of-way.

§ 2802.4–1 Method of filing.

Any proposed transfer, by assignment, lease, operating agreement or otherwise, of a right-of-way acquired under any of the acts, except the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), must be filed in triplicate in accordance with § 2802.1 for approval; must be accompanied by the same showing of qualifications of the assignee as is required of applicants; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the right-of-way. No assignment will be recognized unless and until approved.

§ 2802.4–2 Service fee.

All filings of transfers, by assignment, lease, operating agreement, or otherwise, made pursuant to this section, except by States or agencies or instrumentalities thereof, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2802.5 Disposal of property on termination of right-of-way.

Upon the termination of a right-of-way by expiration or by prior cancellation, in the absence of any agreement to the contrary, if all moneys due the Government thereunder have been paid, the holder of the right-of-way will be allowed six months or such additional time as may be granted in which to remove from the right-of-way all property or improvements of any kind, other than a road and usable improvements to a road, placed thereon by him; but if not removed within the time allowed, all such property and improvements shall become the property of the United States.

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This Circular replaces Circulars 2265 and 2267.

Circular No. 2323

REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

Tramroads and Logging Roads

43 CFR 2810

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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Subpart 2811—Public Lands

§ 2811.0–3 Authority.

(a) The act of January 21, 1895 (28 Stat. 635; 43 U.S.C. 956), authorizes the Secretary under such general regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, quarrying, or of cutting timber and manufacturing lumber. The act does not authorize the use of rights-of-way within the limits of any park or military reservation. The act is made applicable to national forests and reservoir sites by the act of March 3, 1899 (30 Stat. 1233; 16 U.S.C. 525; 43 U.S.C. 665, 958). Where the authorized officer determines it to be in the public interest, he will require applicants under this subpart to execute the same type of right-of-way and road use agreements for the connecting road system as may be required under subpart 2812 with appropriate modifications to meet local conditions: *Provided,* That where the land over which the right-of-way is requested under the jurisdiction of an agency other than the Bureau of Land Management, such requirement shall be made only with the concurrence of the authorized officer of such agency. The authorized officer may require an applicant for or holder of a tramroad right-of-way to execute a bond on a form provided by the Director, modified to refer to the applicable sections of this part, in an amount, not less than $500 per mile or fraction thereof, to be determined by the authorized officer conditioned on compliance with §§ 2800.0–3 to 2802.4 and paragraph (a) and (b) of this section. The arbitration procedures involved in the stipulations shall be in accordance with State law, if any is applicable. In the absence of applicable State law, controversies involving arbitration shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association.

(b) In the opinion of July 16, 1942 (58 I.D. 29), the Solicitor of the Department of the Interior held that the act of February 15, 1901, (31 Stat. 790; 43 U.S.C. 959), superseded the part of the 1895 act authorizing rights-of-way for canals and reservoirs.

§ 2811.0–5 Definitions.

(a) *Tramroads.* Tramroads are considered as including tramways, railroads, and motor-truck roads to be used in connection with mining, quarrying, logging, and the manufacturing of lumber.

§ 2811.1 Application.

An application pursuant to paragraph 2800.0–3(a) for a temporary right-of-way to be used for a period of not more than six months may be filed with the officer in charge of any local office of the Bureau of Land Management having jurisdiction over the lands. No special form for such an application is required but it should state whether the applicant or applicants are citizens of the United States and if a corporation, whether it is qualified under State law to acquire the right-of-way applied for and be accompanied by three copies of a map or sketch which shows the location of the right-of-way with a degree of accuracy sufficient for its position on the ground in relation to the lines and corners of the public land surveys or in relation to some prominent topographic feature, to be readily determined. Such a map or sketch or statement as to citizenship or qualification

may be accepted as the basis for a permit for a temporary right-of-way even though it does not meet the requirements of other regulations in this part, if in the opinion of the authorized officer it would be in the public interest to do so. Within the discretion of the issuing officer, the holder of a temporary permit may be granted a single extension of the permit for a period of not more than six months. Notwithstanding the provisions of §2802.1–6 the charge for use and occupancy of public lands for such temporary rights-of-way shall be at the rate of 50 cents per mile or fraction thereof per month or fraction thereof, with a minimum rental charge of $5 per right-of-way: *Provided,* That no rental charge shall be made for the use and occupancy of public lands for such temporary rights-of-way to be used for the purpose of removing mine or quarry products, timber, or timber products which have been acquired from the United States under contract or permit.

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

§ 2812.0–3 Authority.

(a) The act of January 21, 1895 (28 Stat. 635, 43 U.S.C. 956) authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the centerline of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, or quarrying or of cutting timber and manufacturing timber. The act of January 21, 1895, is made applicable to the Revested Oregon and California Railroad and the Reconveyed Coos Bay Wagon Road Grant Lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(b) The act of August 28, 1937 (50 Stat. 874) provides for the conservation and management of the O. and C. lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

§ 2812.0–5 Definitions.

Except as the context may otherwise indicate, as the terms are used in this paragraph:

(a) "Bureau" means Bureau of Land Management.

(b) "Timber of the United States" or "federal timber" means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.

(c) "State Director" means the State Director, Bureau of Land Management, or his authorized representative.

(d) "Authorized Officer" means an employee of the Bureau of Land Management to whom has been delegated the authority to take action.

(e) "O. and C. lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, other lands administered by the Bureau under the provisions of the act approved August 28, 1937, and the public lands administered by the Bureau of Land Management which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon.

(f) "Tramroads" include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

(g) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

(h) "Licensee" of the United States is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.

(i) "Direct control" of a road, right-of-way, or land, by an applicant for a permit hereunder means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with this paragraph.

(j) "Indirect control" of a road, right-of-way, or land, by an applicant hereunder means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 2812.0–6 Statement of policy.

(a) The intermingled character of the O. and C. lands presents peculiar problems of management which require for their solution the cooperation between the Federal Government and the owners of the intermingled lands, particularly with respect to timber roads.

(b) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and overmature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(c) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of federal timber by competitive bidding, prospective bidders must have an opportunity to reach the timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

(d) Accordingly, to the extent that in the judgment of the authorized officer it appears necessary to accomplish these purposes, when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees (*a*) rights-of-way across lands controlled directly or indirectly by him; (*b*) the right to use, to the extent indicated in §§ 2812.3–5 and 2812.3–6, any portions of the road system or rights-of-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect; (*c*) the right to extend such road system across the operator's lands to reach federal roads or timber; and (*d*) in addition, in the limited circumstances set forth in § 2812.3–2 of this subpart the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States.

(e) When the United States or a licensee of the United States uses any portion of a permittee's road system for the removal of forest products, the permittee will be entitled to receive just compensation, including a fair share of the maintenance and amortization charges attributable to such road, and to prescribe reasonable road operating rules, in accordance with §§ 2812.3–7 to 2812.4–4.

(f) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under subpart 2812 without requesting any rights with respect to roads, rights-of-way or lands which the authorized officer finds will not be required for management of or access to federal timber, or timber included in a cooperative agreement. Where, however, the authorized officer finds that there is a road controlled directly or indirectly by the applicant, which will be needed for such purposes and which he finds either has capacity to accommodate the probable normal requirements both of the applicant and of the Government and its licensees, or such additional capacity can be most economically provided by an investment in such road system by the Government rather than by the construction of a duplicate road, he may require, for the period of time during which the United States and its licensees will have need for the road, the rights to use the road for the marketing and management of its timber and of timber included in a cooperative agreement in return for the granting of rights-of-way across O. and C. lands, and an agreement that the road builder will be paid a fair share of the cost of the road and its maintenance. Where it appears to the authorized officer that such a road will not be adequate or cannot economically be enlarged to handle the probable normal requirements both of the private operator and of the United States and its licensees, or even where the authorized officer has reasonable doubt as to such capacity, he will not request rights over such a road. Instead, the Bureau will make provision for its own road system either by providing in its timber sale contracts that in return for the road cost allowance made in fixing the appraised value of the timber, timber purchasers will construct or extend a different road system, or by expending for such construction or by extension monies appropriated

for such purposes by the Congress, or, where feasible, by using an existing duplicating road over which the Government has obtained road rights. In such circumstances, however, road cost and maintenance allowances made in the stumpage price of O. and C. timber will be required to be applied to the road which the Bureau has the right to use, and thereafter will not in any circumstances be available for amortization or maintenance costs of the applicant's road.

(g) When a right-of-way permit is issued for a road or road system over which the United States obtains rights of use for itself and its licensees, the authorized officer will seek to agree with the applicant respecting such matters as the time, route, and specifications for the future development of the road system involved; the portion of the capital and maintenance costs of the road system to be borne by the timber to be transported over the road system by the United States and its licensees; a formula for determining the proportion of the capacity of the road system which is to be available to the United States and its licensees for the transportation of forest products; and other similar matters respecting the use of the road by the United States and its licensees and the compensation payable therefor. To the extent that any such matter is not embraced in such an agreement, it will be settled by negotiation between the permittee and the individual licensees of the United States who use the road, and, in the event of their disagreement, by private arbitration between them in accordance with the laws of the State of Oregon.

(h) The authorized officer may in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged. The permits shall be revocable by the district forester, the State Director, or the Secretary for violation of their terms and conditions or of these regulations or if hazardous conditions result from the construction, maintenance or use of the rights-of-way by the permittees or those acting under their authority. As a condition for the granting of such permits, the applicant must comply with §§ 2812.3–1 and 2812.3–3 of this paragraph to the extent that rights-of-way and road use rights are needed to remove government timber offered for sale in the same general area during the period for which the short term right-of-way is granted.

(i) The authorized officer may, in his discretion, issue to private operators rights-of-way across O. and C. lands, needed for the conduct of salvage operations, for a period not to exceed five years. A salvage operation as used in this paragraph means the removal of trees injured or killed by windstorms, insect infestation, disease, or fire, together with any adjacent green timber needed to make an economic logging show. As a condition of the granting of such rights-of-way, the operator will be required, when the authorized officer deems it necessary, to grant to the United States and its licensees for the conduct of salvage operations on O. and C. lands for a period not to exceed five years, rights-of-way across lands controlled directly or indirectly by him and to grant the right to use to the extent indicated in §§ 2812.3–5 and 2812.3–6 any portions of the road system controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the requirements of both the operator and of the United States and its licensees.

§ 2812.0–7 Cross Reference.

For disposal of timber or material to a trespasser, see § 9239.0–9 of this chapter.

§ 2812.1 Application procedures.

§ 2812.1–1 Filing.

(a) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on a form prescribed by the Director and filed in the appropriate district office. Application forms will be furnished upon request.

(b) Any application filed hereunder, including each agreement submitted by the applicant as a part thereof or as a condition precedent to the issuance of a permit, may be withdrawn by the applicant by written notice delivered to the appropriate district forester prior to the time the permit applied for has been issued to, and accepted by, the applicant.

§ 2812.1–2 Contents.

(a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of § 1811 of this chapter.

(b) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

(c) Where the application is for a right-of-way on any portion of which the applicant proposes to construct a road, it must be accompanied by two copies of a map prepared on a scale of 4 inches or 8 inches to the mile. Showing

the survey of the right-of-way so that it may be accurately located on the ground. The map should comply with the following requirements, except as the authorized officer may waive in any particular instance all or any of such requirements:

Courses and distances of the center line of the right-of-way should be given; the courses referred to the true meridian and the distance in feet and decimals thereof. The initial and terminal points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or, if there be no such corner within two miles, then connected to two permanent and prominent monuments or natural objects. All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked. The width of the right-of-way should be given; and if not of uniform width, the locations and amount of change must be definitely shown. There shall also be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges. The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in Forms as approved by the Director.

(d) Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

(e) Every application for a right-of-way must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested right-of-way will connect, the portions of such road system which the applicant directly controls within the meaning of paragraph 2800.0–5(k), the portions thereof which the applicant indirectly controls within the meaning of paragraph 2800.0–5(l), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

§ 2812.1–3 Trespass.

The mere filing of an application under this paragraph does not authorize the applicant to use the right-of-way in any manner or for any purpose until written permission therefor has been duly executed by the authorized officer and delivered to the applicant. Any unauthorized use of O. and C. land constitutes a trespass for which the trespasser is liable in damages to the United States. Where there has been such a trespass, no permit shall be issued to the alleged trespasser unless (*a*) the trespass claim is fully satisfied; or (*b*) the alleged trespasser files a bond conditioned upon payment of the amount of damages found by the State supervisor, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or (*c*) the State Director finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability or as to the extent of his liability and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States.

§ 2812.2 Nature of permit.

§ 2812.2–1 Nonexclusive license.

Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 2812.6–2 and 2812.8–3, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 2812.8.

§ 2812.2–2 Right of permittee to authorize use by third parties.

A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement while the prior permit is outstanding, to be bound by the road rules of and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and

standards established by the regulations in §§ 2812.4–1, 2812.4–3 and 2812.4–4 of this subpart.

§ 2812.2–3 Construction in advance of permit.

The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by this paragraph. Advance construction will not be authorized unless and until applicant has complied with §§ 2812.1–1, 2812.1–2, 2812.3–1 and 2812.5–1.

§ 2812.3 Right-of-way and road use agreement.

§ 2812.3–1 Rights over lands controlled by applicant.

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0–6, he may require the applicant, as a condition precedent to the issuance of the permit:

(a) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(b) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of this paragraph such portion as the applicant directly controls of the road system and rights-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or rights-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and rights-of-way.

§ 2812.3–2 Other roads and rights-of-way controlled by applicant.

In addition to the private road systems and rights-of-way described in § 2812.3–1 in the event the applicant controls directly or indirectly other roads or rights-of-way in any O. and C. area where the authorized officer of the Bureau finds that, as of the time of filing or during the pendency of the application, the United States is unreasonably denied access to its timber for management purposes or where, as of such time, competitive bidding by all prospective purchasers of timber managed by the Bureau in the O. and C. area, or of other Federal timber intermingled with or adjacent to such timber, is substantially precluded by reason of the applicant's control, direct or indirect, of such roads or rights-of-way, the authorized officer may require the applicant to negotiate an agreement granting to the United States and its licensees the right to use, in accordance with the terms and conditions of this paragraph such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

§ 2812.3–3 Form of grant to the United States, recordation.

Any grant of rights to the United States under this section shall be executed on a form prescribed by the Director which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the appropriate district manager.

§ 2812.3–4 Where no road use agreement is required.

Where, in the judgment of the authorized officer, it is consistent with the policy set forth in subpart 2811 he may issue a permit without requesting the applicant to grant any rights to the United States under this subparagraph.

§ 2812.3–5 Use by the United States and its licensees of rights received from a permittee.

The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from Government lands or from other lands during such periods of time as the timber thereon may be committed by a cooperative agreement to coordinated administration with timber of the United States. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by §§ 2812.3–7 and 2812.4–3.

§ 2812.3–6 Duration and location of rights granted or received by the United States.

The rights-of-way granted by the United States under any permit issued under § 2812.6, subject to the provisions of § 2812.7, will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest of the various portions of the right-of-way requested. In the same manner the permit will also state the duration of the rights of the United States to use and to permit its licensees to use, and the location by legal subdivisions of, each of the various portions, if any, of the roads, rights-of-way, and lands which a permittee hereunder authorizes the United States and its licensees to use; and, similarly, the duration of such rights received by the United States will normally be coincident with the probable period of use for the removal of forest products, by the United States and its existing and prospective licensees, of such roads, rights-of-way, and lands.

§ 2812.3–7 Permittee's agreement with United States respecting compensation and adjustment of road use.

(a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; the total volume of timber to be moved over such road system, and the proportion of such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United States or its licensees shall be required to amortise such capital cost; provisions for road maintenance; the use in addition to the uses set forth in § 2812.3–5 which the United States and its licensees may make of the road system involved, a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the authorized officer may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such advance agreement, subsequent contracts for the sale of timber managed by the Bureau and tapped by such road system, and subsequent cooperative agreements for the coordinated management of such timber with other timber, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the advance agreement. Where such an advance agreement between the United States and the permittee includes provisions relating to the route and specifications for extensions of the road system involved, the authorized officer may agree that upon the filing of proper applications in the future the applicant or his successor in interest shall receive the necessary permits for such road extensions as may cross lands managed by the Bureau: *Provided, however,* That the applicant shall have substantially complied with the terms of such advance agreement and of the outstanding permits theretofore issued to him.

(b) The provisions of § 2812.4 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 2812.4 Arbitration and agreements.

§ 2812.4–1 Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.

(a) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 2812.3–7 of this subpart, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4–4. During the pendency of such arbitration proceedings the licensee shall be entitled to use the road, right-of-way, or lands involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and upon the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the authorized officer and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which might accrue by reason of the licensee's use of the road, as the authorized officer may prescribe.

(b) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road

of the type involved, including in such replacement costs an extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 2812.3–5. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(c) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(d) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 2812.4–2 Compensation payable by United States to permittee for use of road.

In the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under § 2812.3–7 covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State Director, who shall base his determination upon the same standards established by this paragraph for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however,* That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cruise made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State Director.

§ 2812.4–3 Agreements and arbitration between permittee and licensee respecting adjustment of road use.

(a) When the United States exercises the right received under this paragraph to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under § 2812.3–7 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4–4.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived therefrom; the extent to

which each of the parties may practicably satisfy any of the aforesaid commitments from other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 2812.4–4 Arbitration procedure.

Within 10 days after the delivery of a written request for arbitration under §§ 2812.4–1 or 2812.4–3 of this subpart each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(b) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 2812.4–1 and 2812.4–3.

(c) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 2812.4–1 and 2812.4–3, for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the appropriate district director or the State Director, either personally or by registered mail.

(d) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matter as may appear relevant to the arbitrators.

§ 2812.5 Payment to the United States, bond.

§ 2812.5–1 Payment required for O. and C. timber.

An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

§ 2812.5–2 Payment to the United States for road use.

(a) A permittee shall pay a basic fee of $5 per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. If the term of the permit is for 5 years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than 5 years, the basic fee for each 5-year period or for the remainder of the last period, if less than 5 years, must be paid in advance at 5-year intervals: *Provided, however,* That in those cases where the permittee has executed under §§ 2312.3–1 to 2812.3–5 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under § 2812.3–1(b).

(b) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. In the case of federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreational or other authorized uses shall be deducted from the replacement costs of the road before the amortization item is computed. A similar allowance and deduction shall be made in cases involving roads constructed as a part of a timber sale contract when, and if, subsequent to completion of such contract any such road becomes subject to recreational or other authorized uses. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: *Provided, however,* That this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under this subpart 2812: *Provided further,* That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without

charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and paragraph 2812.4–1(b), as may be applicable.

(c) If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit which provides that as to such road the applicant's road use payments shall be determined in accordance with paragraph (b) of this section except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States: *Provided, however,* That if the application is for use of a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with §§ 2812.3–1 to 2812.3–5 to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber therefrom.

§ 2812.5–3 Bonds in connection with existing roads.

An applicant for permit or a permittee desiring to use an existing road owned or controlled by the United States, shall prior to such use post a bond on a form prescribed by the Director. The amount of the bond shall be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof. The bond shall be executed by an approved corporate surety, or the permittee may deposit an equivalent amount in cash or negotiable securities of the United States and the bond shall be conditioned upon compliance with subpart 2812 and the terms and conditions of the permit.

§ 2812.6 Approval and terms of permit.

§ 2812.6–1 Approval.

(a) Upon the applicant's compliance with the appropriate provisions of this paragraph and if it is determined that the approval of the application will be in the public interest, the authorized officer may, in his discretion, issue an appropriate permit, upon a form prescribed by the Director.

(b) The authorized officer may waive the requirements of paragraphs 2812.1–2 (c) and (e) and § 2812.5–3 in the case of a natural person who applies for a right-of-way for not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

§ 2812.6–2 Terms and conditions of permit.

(a) As to all permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under §§ 2812.3–1 to 2812.3–5 with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the authorized officer that the permittee allow use of a road in conformity with such additional regulations, the permittee shall unreasonably withhold his assent, the authorized officer shall refer the disagreement through the proper channels to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the authorized officer and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the authorized officer, and if the permittee nevertheless unreasonably withholds such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the authorized officer and making payment therefor.

(3) To take adequate precaution to prevent forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way on which a road is being used or constructed by the permittee or any fire caused by the permittee; to do no burning on or near the right-of-way without State permit during the seasons that permits are required and in no event to set fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 2812.4–1, 2812.4–3, and 2812.4–4.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under §§ 2812.3–1 to 2812.3–5 of this paragraph to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a

licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under this paragraph to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(8) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the authorized officer may otherwise permit or direct to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use; *Provided, however,* That the road and all usable road improvements shall be left in place.

(10) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under §§ 2812.1–3 to 2812.1–5.

(11) To grant to the United States, upon request of an authorized officer in lieu of the rights-of-way across legal subdivisions granted pursuant to §§ 2812.1–3 to 2812.1–5, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: *Provided,* That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the rights-of-way across such legal subdivisions previously granted: *Provided further,* That if the United States builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with § 2812.4–2. The authorized officer shall waive the requirement under this subparagraph, however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success.

(b) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 2812.7 Assignment of permit.

Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the appropriate district forester for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 2812.1–2 and 2812.3–1 to 2812.3–5, and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

§ 2812.8 Cause for termination of permittee's rights.

§ 2812.8–1 Notice of termination.

(a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any requirement of such permit or this paragraph, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(b) The authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in the performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to this paragraph, nor shall it affect the

right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under this paragraph, to submit to and be bound by arbitration pursuant to §§ 2812.4–1, 2812.4–3, and 2812.4–4.

§ 2812.8–2 Remedies for violations by licensee.

(a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of this paragraph, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to § 2812.9 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permttee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 2812.8–3 Disposition of property on termination of permit.

Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed 6 months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 2812.9 Appeals.

An appeal pursuant to Parts 1840 and 1850 of this chapter, may be taken from any final decision of the authorized officer, to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

This Circular replaces Circular 2265.

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Circular No. 2324

REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

Roads and Highways

43 CFR 2820

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Reprint
MARCH 28, 1972

PART 2820—ROADS AND HIGHWAYS

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Subpart 2821—Under Title 23, U.S.C. (Interstate and Defense Highway System)

§ 2821.0–3 Authority.

(a) Title 23, United States Code, section 107, paragraph (d), provides that whenever rights-of-way, including control of access, on the National System of Interstate and Defense Highways are required over lands or interests in lands owned by the United States, the Secretary of Transportation may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands. It directs any such agency to cooperate with the Secretary of Transportation in this connection.

(b) Title 23, United States Code, section 317, provides that:

(1) If the Secretary of Transportation determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway constructed on the Federal-aid primary system, the Federal-aid secondary system and the National System of Interstate and Defense Highways, or under Title 23, United States Code, Chapter 2, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary of Transportation shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(2) If within a period of 4 months after such filing the Secretary of such department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such lands or materials have been reserved or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such lands and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified.

§2821.1 Extent of grant.

By decision of the Secretary, Nevada Department of Highways, A.24151, September 1945, it was held that the law imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

§ 2821.2 Termination of right-of-way no longer needed.

If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Transportation and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated. Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau which granted the rights.

§ 2821.3 Applications.

§ 2821.3–1 General.

Except where an application involves lands wholly within an Indian reservation applications for rights-of-way and material sites under title 23, United States Code, for lands under the jurisdiction of the Department of the Interior, together with four copies of a durable and legible map shall be filed by the appropriate State highway department in the manner prescribed by § 2802.1. Maps should accurately describe the land or interest in land desired, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent, engineer or land surveyor. The map should comply with the requirements of § 2802.1–5(a). Applications for lands wholly within an Indian reservation shall be filed in the office of the superintendent of Indian Affairs agency which has jurisdiction

over the lands, or for lands for which there is no agency, in the office of the Area Director who has jurisdiction over the lands. Applications for lands administered by the National Park Service shall be filed with the Director of the National Park Service, Washington, D.C. 20240, and applications for lands administered by the Fish and Wildlife Service shall be filed with the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife, both of whom, notwithstanding the provisions of subparagraphs (3) and (4) of this paragraph, shall process such applications and issue grants of rights-of-way in accordance with the regulations of this subpart. Applications for lands outside of the jurisdiction of the Department of the Interior shall be filed pursuant to the rules or regulations of the Department or agency having jurisdiction over the lands.

§ 2821.3–2 Consultation with local Bureau officials, program values.

When the lands involved are under the jurisdiction of the Department of the Interior an applicant will be expected, at the earliest possible date prior to the filing of an application, to consult with the local officials of the Bureau or Office having jurisdiction over the lands to ascertain whether or not the use of appropriation of the lands for right-of-way purposes is consistent with the management program and to agree to such measures as may be necessary to maintain program values. Failure to do so may lead to an unresolvable conflict of interest and necessitate disallowance of the application.

§ 2821.3–3 Concurrence by Bureau of Public Roads.

The appropriate state highway department will forward a copy of each application and map filed with the Department of the Interior to the authorized officer of the Bureau of Public Roads for a determination whether the lands and interests in lands are necessary for the purposes of Title 23, United States Code.

§ 2821.4 Approval.

After receipt of such determination that the lands or interests in lands under application are reasonably necessary for the purposes of Title 23, United States Code, the authorized officer of the Bureau of Land Management will notify the applicant and the authorized officer of the Bureau of Public Roads either (1) that the approval of the application would be contrary to the public interest or inconsistent with the purposes for which the lands or materials have been reserved or (2) that he proposes to grant the right-of-way under the regulations of this part, subject to said regulations and to such conditions which he indicates in his notice.

§ 2821.5 Terms and conditions of allowance.

Grants of rights-of-way under Title 23, United States Code, by the authorized officer of the Bureau of Land Management will be made to the appropriate State highway department or to its nominee and based upon considerations of adequate protection and utilization of Federal lands and interests in lands will be subject to (1) all the pertinent regulations of this part except those which the authorized officer, upon formal request of the applicant may modify or dispense with, in whole or in part, upon a finding that it is in the public interest and in conformity with the purposes of Title 23, United States Code, and (2) any conditions which he deems necessary. Grants of highway rights-of-way under this subpart may include an appropriation and release to the State or its nominee of all rights of the United States, as owner of underlying and abutting lands, to cross over or gain access to the highway from its lands crossed by or abutting the right-of-way, subject to such terms and conditions and for such duration as the authorized officer of the Bureau of Land Management deems appropriate.

§ 2821.6 Additional rights-of-way within highway rights-of-way.

§ 2821.6–1 General.

No application under the regulations of this part is required for a right-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, for facilities usual to a highway, except (a) where terms of the grant or a provision of law specifically requires the filing of an application for a right-of-way, (b) where the right-of-way is for electric transmission facilities which are designed for operation at a nominal voltage of 33 KV or above or for conversion to such operation or (c) where the right-of-way is for oil or gas pipelines which are part of a pipeline crossing other public lands, or if not part of such a pipeline, which are more than two miles long. When an application is not required under the provisions of this subparagraph, qualified persons may appropriate rights-of-way for such usual highway facilities with the consent of the holder of the highway right-of-way, which holder will be responsible for compliance with § 2801.1–5, in connection with the construction and maintenance of such facilities.

§ 2821.6–2 Terms of grant.

Except as modified by § 2821.6–1 of this subpart, rights-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, and applications for such rights-of-way, are subject to all the regulations of this part pertaining to such rights-of-way.

(43 U.S.C. 1371)

Subpart 2822—Roads Over Public Lands Under R.S. 2477

§ 2822.0–3 Authority.

R.S. 2477 (43 U.S.C. 932), grants rights-of-way for the construction of highways over public lands, not reserved for public uses.

§ 2822.1 Applications.

§ 2822.1–1 For unreserved public lands.

No application should be filed under R.S. 2477, as no action on the part of the Government is necessary.

§ 2822.1–2 Procedure when reserved land is involved; rights-of-way over revested and reconveyed lands.

(a) *Showing Required.* When a right-of-way is desired for the construction of a highway under R.S. 2477 over public land reserved for public uses, and such reserved land is under the jurisdiction of the Department of the Interior, and when a right-of-way is desired for the construction of a highway under R.S. 2477 over the Revested and Reconveyed Lands, an application should be made in accordance with § 2802.1. Such application should be accompanied by a map, drawn on tracing linen, with two print copies thereof, showing the location of the proposed highway with relation to the smallest legal subdivisions of the lands affected.

(b) *Revocation or modification of withdrawal.* Where reserved lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application, unless and until the reservation shall have been revoked or modified so as to permit construction of the highway, subject to such terms and conditions, if any, as may be deemed reasonable and necessary for the adequate protection and utilization of the reserve.

(c) *Revested and Reconveyed Lands.* Where Revested and Reconveyed Lands are involved, no rights to establish or construct the highway will be acquired by reason of the filing of such application unless and until the authorized officer of the Bureau of Land Management shall grant permission to construct the highway, subject to such terms and conditions as he deems necessary for the adequate protection and utilization of the lands, and for the maintenance of the objectives of the act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a).

§ 2822.2 Nature of interest.

§ 2822.2–1 Effective date of grant.

Grants of rights-of-way referred to in the preceding section become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses.

§ 2822.2–2 Extent of grant.

(a) *Consent of grantee to additional facilities within right-of-way.* Rights-of-way granted by R.S. 2477 do not include rights-of-way for facilities with respect to which any other provision of law specifically requires the filing of an application for a right-of-way. When the holder of such highway right-of-way determines that such facility will not seriously impair the scenic and recreational values of an area and its consent is obtained, the Department waives the requirement of an application for a right-of-way for all facilities usual to a highway along a highway right-of-way granted by R.S. 2477 except for electric transmission facilities, designed for operation at a nominal voltage of 33 kv or above, or designed for conversion to such operation, or for oil or gas pipe lines which are more than 2 miles long and are not part of any other pipe line crossing public lands. Applications shall be made under Subpart 2851, with respect to any right-of-way for an electric transmission facility subject to this exception, and under Subpart 2881 inclusive, for pipe line facilities subject to this exception.

(b) *Terms of grant.* Holders of grants under R.S. 2477 shall be subject to the terms and conditions of § 2801.1–5, (c), (d), (e), (i), and (k). Where the holder of the highway consents to the construction of usual highway facilities, as provided above, such holder shall be responsible for compliance with the designated subparagraph § 2801.1–5 in connection with the construction and maintenance of such facilities.

This Circular replaces Circular 2265.

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Circular No. 2325

REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

Railroads, Station Grounds, Wagon Roads

43 CFR 2840

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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PART 2840—RAILROADS, STATION GROUNDS, WAGON ROADS

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Subpart 2841—Railroads, Wagon Roads and Tramways in Alaska

§ 2841.0–3 Authority.

The rights-of-way for railroads, wagon roads, and tramways in the State of Alaska, granted by sections 2 to 9 inclusive, of the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411–419).

§ 2841.0–7 Cross reference.

For forms 1 to 8 inclusive, referred to in this subpart, see appendix C of this subchapter.

§ 2841.1 Nature of interest.

(a) The act does not convey an estate in fee in the lands used for such purposes or in the lands used for station and terminal facilities. The grant is merely of a right of use for the necessary and legitimate purposes of the roads, the fee remaining in the United States, except as to lands authorized to be sold under section 6 by the Secretary of the Interior, "upon such expressed conditions as in his judgment may be necessary to protect the public interests." The nature of these conditions will depend upon the public necessities and will be governed by the particular circumstances of each case. These sections authorize the Secretary of the Interior to approve maps and plats affecting unsurveyed as well as surveyed land, and while it is not obligatory on the part of grantees to file additional maps and plats after survey of the lands, showing connections with the public surveys, and the smallest legal subdivisions of all lands affected, by so doing the grants and the extent thereof could be properly recorded on the records of the Bureau of Land Management and readily determined.

(b) All persons entering public lands, to part of which a right-of-way has attached, take the same subject to such right-of-way, the latter being computed as a part of the area of the tract entered.

(c) Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnations of the right-of-way across the same may be made in accordance with the provisions of section 4 of the said act of May 14, 1898.

§ 2841.2 Procedures.

§ 2841.2–1 Applications.

(a) *Incorporated companies.* (1) Any incorporated company desiring to obtain the benefits of this part is required to file the following papers and maps:

(i) A copy of its articles of incorporation duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State where organized.

(ii) A copy of the State law under which the company was organized, with the certificate of the governor or secretary of the State that the same is the existing law.

(iii) When said law directs that the articles of association or other papers connected with the organization be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

(iv) A certificate from the Secretary of the State of Alaska showing that the Company has complied with the State law.

(v) The official statement, under seal of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory where organized. (Form 1, Appendix C).

(vi) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2, Appendix C).

(vii) If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to the Bureau of Land Management by the governor or secretary of any State, a company organized in such State or Territory may file, in lieu of the requirements of subdivision *b* of this paragraph, a certificate of the governor or Secretary of the State that no change has been made since a given date, not later than that of the laws last forwarded.

(viii) Maps, field notes, and other papers as hereinafter required.

(2) No forms are prescribed for the proofs required in subparagraph (1) (i) to (iv) as each case must be governed to some extent by the laws of the State.

(b) *Individuals or associations of individuals.* Individuals or associations of individuals making applications for permits, under section 6 of the act (30 Stat. 411; 48 U.S.C. 416), for tramways or wagon roads are required to file evidence of citizenship. In the case of associations a statement must be filed by the principal officer thereof, giving a list of its members and stating that the list includes all the members. Evidence of

citizenship must be furnished for each member of the association. Individuals and associations will also be required to file the maps, field notes, and other papers hereinafter required.

(c) *Maps and plats.* All maps and plats must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey thereof, wherever such surveys have been made. The word "profile" as used in the act is understood to intend a map of alignment. No profile of grades will be required.

(d) *Data required on maps.* (1) The maps should show any other road crossed or with which connection is made, and whenever possible the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which the applicant asks right-of-way. Field notes of the surveys should be written along the line on the map. If the map should be too much crowded to be easily read, then duplicate field notes should be filed separate from the map, and in such form that they may be folded for filing. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. Station numbers should also be given on the map in all cases where changes of numbering occur and where known lines of survey, public or otherwise, are crossed, with distance to the nearest permanent monument or other mark on such line. The map must also show the lines of reference of initial, terminal, and intermediate points, with their courses and distances.

(2) When the lines are located on surveyed land, the maps must show the 40-acre subdivisions; when on unsurveyed land, a meridian should be drawn on maps through initial and terminal points and at intervals of not more than 6 miles, intermediate points.

§ 2841.2–2 Survey.

(a) *Data required in field notes; instructions as to surveys.* Typewritten field notes, with clear carbon copies, are preferred, as they expedite the examination of applications. All monuments and other marks with which connections are made should be fully described, so that they may be easily found. The field notes must be so complete that the line may be retraced on the ground. On account of the conditions existing in Alaska surveys based wholly on the magnetic needle will not be accepted. In that case a true meridian should be established, as accurately as possible, at the initial point. It should be permanently marked and fully described. The survey should be based thereon and checked by a meridian similarly fixed at the terminal point and, when the line is a long one, by intermediate meridians at proper intervals. On account of the rapid convergence of the meridians in these latitudes such intermediate meridians should be established at such intervals as to avoid large discrepancies in bearings. It will probably be found preferable to run by transit deflections from a permanently established line, with frequent and readily recoverable reference lines permanently marked; and in such surveys occasional true bearings should be stated, at least approximately. On all lines of railroad the 10-mile sections should be indicated and numbered, and on maps of tramways and wagon roads the 5-mile sections shall likewise be indicated and numbered.

(b) *Filing of papers.* The maps, field notes, and accompanying papers should be filed in the land office for the district where the proposed right of way is located.

(c) *Connections with other surveys.* Connections should be made with other surveys, public or private, whenever possible; also with mineral monuments and other known and established marks. When a sufficient number of such points are not available to make such connections at least every 6 miles, the surveyor must make connection with natural objects or permanent monuments.

(d) *Permanent monuments or marks.* Along the line of survey, at least once in every mile, permanent and easily recoverable monuments or marks must be set and connected therewith, in such positions that the construction of the road will not interfere with them. The locations thereof must be indicated on the maps. All reference points must be fully described in the field notes, so that they may be relocated, and the exact point used for reference indicated.

(e) *Designation of termini.* The termini of a line of road should be fixed by reference of course and distance to a permanent monument or other definite mark. The initial point of the survey and of station, terminal, and junction grounds should be similarly referred. The maps, field notes, engineer's certificate, and applicant's certificate (Forms 3 and 4, Appendix C), should each show these connections.

(f) *Statement and certificates required.* The engineer's certificate and applicant's certificate must be written on the map, and must both designate by termini (as in the preceding subparagraph) and length in miles and decimals the line of route for which right of way application is made. (See Forms 3 and 4, Appendix C.) Station, terminal, or junction grounds must be described by initial point (as in the preceding subparagraph) and area in acres (Forms 7 and 8, Appendix C) when they are located on surveyed land, and the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein. When the applicant is an individual the word "applicant" should be used instead of "company," and such other changes made as are necessary on this account.

(g) *Additional width for right-of-way.* Where additional width is desired for railroad right-of-way on account of heavy cuts or fills, the additional right-of-way desired should be stated, the reason therefor fully shown, the limits of the additional right-of-way exactly designated, and any other information

furnished that may be necessary to enable the manager to consider the case before giving it his approval.

(h) *Preliminary map and field notes.* The preliminary map authorized by the proviso of section 4 of the act will not be required to comply so strictly with the foregoing instructions as maps of definite location; but it is to be observed that they must be based upon an actual survey, and that the more fully they comply with subpart 2841 the better they will serve their object, which is to indicate the lands to be crossed by the final line and to preserve the company's prior right until the approval of its maps of definite location. Unless the preliminary map and field notes are such that the line of survey can be retraced from them on the ground, they will be valueless for the purpose of preserving the company's rights. The preliminary map and field notes should be in duplicate, and should be filed in the land office in order that proper notations may be made on the records as notice to intending settlers and subsequent applicants for the right of way.

(i) *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to an inch. The maps may, however, be drawn to a scale of 1,000 feet to an inch when necessary, or, in extreme cases, to 500 feet to an inch, and should be so selected as to avoid making maps inconveniently large for handling. No other scales may be used. In most cases, by furnishing separate field notes, an increase of scale can be avoided. Plats of station, terminal, and junction grounds, etc., should be drawn on a scale of 500 feet to an inch, and must be filed separately from the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

(j) *Plats of station, terminal, and junction grounds.* Plats of station, terminal, and junction grounds must be prepared in accordance with the direction for maps of lines of routes. Whenever they are located on or near navigable waters the shore line must be shown, and also the boundaries of any other railroad grounds or other claims located on or near navigable waters within a distance of 80 rods from any point of the tract applied for.

(k) *Showing required in application.* (1) All applications for permits made under section 6 of the act should state whether it is proposed to collect toll on the proposed wagon road or tramway; and, in case of wagon roads, the application must be accompanied by satisfactory evidence, corroborated by a statement, tending to show that the public convenience requires the construction of the proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. In all cases, if the proposed line of road shall be located over any road or trail in common use for public travel, a satisfactory statement, corroborated by statement, must be submitted with the application, showing that the interests of the public will not be injuriously affected thereby.

(2) All applications must be accompanied by an application service fee of $10 which will not be returnable.

§ 2841.3 Evidence of construction.

§ 2841.3–1 Statement and certificates required when road is constructed.

When the road is constructed a certificate of the engineer and a certificate of the applicant (Forms 5 and 6, Appendix C) should be filed in the proper land office in duplicate. In case of deviations from the map previously approved, whether before or after construction, there must be filed new maps and field notes in full, as in this part provided, bearing proper forms, changed to agree with the facts in the case, and the location must be described in the forms as the amended survey and the amended definite location. In such cases, the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the manager.

§ 2841.3–2 Action where required evidence is not filed.

Unless the proper evidence of construction is filed within the time prescribed by the act for the construction of each section of the road, appropriate steps will be taken looking to the cancellation of the approval of the right of way and the notations thereof on the records.

§ 2841.4 Charges for transportation of passengers and freight.

§ 2841.4–1 Required showings, consent.

In the case of a wagon road or tramway built under permit issued under section 6 of the act upon which it is proposed to collect toll, a printed schedule of the rates for freight and passengers should also be filed with the manager for his consideration and approval at least 60 days before the road is to be opened to traffic, in order to allow a sufficient time for consideration, inasmuch as by section 6 it is made a misdemeanor to collect toll without written authority from the Secretary of the Interior. In the case of a wagon road satisfactory evidence, corroborated, must be submitted with said schedule, showing that at least an average of $500 per mile has been actually expended in constructing such road. These schedules must be submitted in duplicate, one copy of which, bearing the approval of the manager, will be returned to the applicant if found satisfactory. Said schedules shall be plainly printed in large type.

§ 2841.4–2 Schedules to be filed with Interstate Commerce Commission.

Schedules of passenger and freight rates on railroads should be filed with the Interstate Commerce Commission.

Subpart 2842—Railroads and Station Grounds Outside of Alaska

§ 2842.0–3 Authority.

The act approved March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–939) grants rights-of-way to railroad companies through the public lands of the United States, for railroad and station ground purposes, and the act of March 3, 1899 (30 Stat. 1233; 16 U.S.C. 525) authorizes the Secretary of the Interior to approve surveys and plats of such rights-of-way "over and across any forest reservation or reservoir site when in his judgment the public interest would not be injuriously affected thereby."

§ 2842.1 Nature of grant.

(a) *Generally.* A railroad company to which a right-of-way is granted does not secure a full and complete title to the land on which the right-of-way is located. It obtains only the right to use the land for the purposes for which it is granted and for no other purpose, and may hold such possession, if it is necessary to that use, as long and only as long as that use continues. The Government conveys the fee simple title in the land over which the right-of-way is granted to the person to whom patent issues for the legal subdivision on which the right-of-way is located, and such patentee takes the fee subject only to the railroad company's right of use and possession. All persons settling on a tract of public land, to part of which right-of-way has attached, take the same subject to such right-of-way, and at the total area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location, his right is superior, and he is entitled to such reasonable measure of damages for right-of-way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of the Department of the Interior.

(b) *Private lands and possessory claims.* Whenever any right-of-way shall pass over private land or possessory claims on lands of the United States, condemnation of the right-of-way across the same may be made in accordance with the provisions of section 3 of the act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 936), or the right can be purchased as provided by section 2288 of the Revised Statutes, as amended by section 3 of the act of March 3, 1891 (26 Stat. 1097; 43 U.S.C. 174).

§ 2842.2 Procedures.

§ 2842.2–1 Applications.

(a) *Locaton*—(1) *National forest.* When a right-of-way is located within a national forest the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest.

(2) *Proposed national forest; construction through forests.* (i) When a right-of-way is located within a proposed national forest the applicant must file such stipulation and execute such bond as may be required for the protection of such proposed forest.

(ii) No construction will be allowed in a national forest or a proposed national forest until an application for right-of-way has been regularly filed in accordance with the laws of the United States and has been approved, or has been considered by the Department of the Interior, and permission for such construction has been specifically given.

(iii) All rights-of-way applications for railroads and station grounds within national forests must be accompanied by a service fee of $10 which will not be returnable.

(b) *Material to be filed.* (1) Any railroad company desiring to obtain the benefits of the law is required to file with the manager of the land office for the district in which the principal terminus of the road is to be located:

(i) A copy of its articles of incorporation, duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(ii) A citation of the law of the State or Territory under which the company was organized, and any amendments thereof.

(iii) If the law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territory officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(iv) When a company is operating in a State other than the State or Territory in which it is incorporated it must submit the certificate of the proper officer of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(v) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory in which it is incorporated. (Form 1, Appendix A.)

(vi) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2, Appendix A.)

(2) No forms are prescribed for the proofs required in subparagraph (1)(i)-(iv) of this paragraph, as each case must be governed to some extent by the laws of the State or Territory.

(c) *Maps*—(1) *Maps of alignment.* (i) The word profile as used in this act is understood to intend a map of alignment. All such maps and plats of station grounds are required by the act

to be filed with the manager of the land office for the district where the right-of-way is located; but if the right-of-way is located in more than one district, duplicate maps and field notes need be filed in but one district, and single sets in the others. The maps must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey of the line of route or of the station grounds.

(ii) The maps should show any other road crossed, or with which connection is made, and whenever possible the station number on the survey therof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which applicant asks right-of-way. Field notes of the surveys should be written along the line on the map. If the map would thereby be too crowded to be easily read, then duplicate field notes should be filed separate from the map. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. In all cases station numbers should be given on the map where changes of numbering occur and where the lines of the public surveys are crossed, with distances to the nearest existing corner. The map must also show the lines of reference of initial and terminal points, with their courses and distances.

(2) *Field notes.* Typewritten field notes, with clear carbon copies, are preferred whenever separate field notes are necessary, as they expedite the examination of applications. The field notes, whether given on the map or filed separately, must be so complete that the line may be retraced from them on the ground. They should show whether lines were run on true or magnetic bearings, and if run on magnetic bearings the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public-survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

(3) *Scale of maps.* The scale of maps showing the line of route should be 2,000 feet to the inch ordinarily, but when absolutely necessary the scale may be increased to 1,000 feet to the inch. These scales are fixed so that maps may be readily handled and filed. In most cases, by furnishing separate field notes an increase of scale may be avoided. Plats of station grounds should be drawn on a scale of 500 feet to the inch, and must be filed separately from the map of the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

(4) *Public-land subdivisions.* All subdivisions of the public surveys represented on the map should have their entire boundaries drawn, and all lands affected by the right-of-way the smallest legal subdivisions (40-acre tracts and lots) must be shown.

(5) *Termini of road.* The termini of the line of road should be fixed by reference of course and distance to the nearest existing corner of the public survey. The map, field notes, engineer's statement, and president's certificate (Forms 3 and 4, Appendix A), should each show these connections. The company must certify in Form 4 that the road is to be operated as a common carrier of passengers and freight. A tract for station grounds must be similarly referenced and described on the plat and in Forms 7 and 8 (Appendix A), except when the tract conforms to the subdivisions of the public survey, in which case it may be described in the forms according to the subdivisions.

(6) *Connections on unsurveyed lands.* When either terminal of the line of route is upon unsurveyed land it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant and the single bearing and distance from the terminal point to the corner must be computed and noted on the map in the engineer's statement, and in the president's certificate (Forms 3 and 4, Appendix A). The notes and all data for the computation of the traverse must be given.

(7) *Connections with monuments on unsurveyed land.* When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. There must be given an accurate description of the mark and full data of the traverse, as required above. The engineer's statement and president's certificate (Forms 3 and 4, Appendix A), must state the connections. These monuments are of great importance.

(8) *Surveyed and unsurveyed land.* (a) When the line of route lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately stated in Forms 3 and 4 (Appendix A) by connection of termini and length, as though each portion were independent.

(b) When lands desired for station grounds lie partly on unsurveyed land, the areas of the several parts on surveyed and unsurveyed land must be separately stated on the map and in Forms 7 and 8 (Appendix A).

(c) Lines or route or station grounds lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to the regulations in this part, but the approval will only relate to that portion traversing the surveyed lands.

(9) *Unsurveyed land.* Maps of lines of route or plats of station grounds lying wholly on unsurveyed lands may be received and placed on file in the land office of the district in which the same is situated, for general information, and the date of filing will be noted thereon;

but the same will not be approved as the act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps or plats will not dispense with the filing of maps or plats after the survey of the lands and within the time limited in the act granting the right-of-way. If these maps or plats are in all respects regular when filed, they will receive approval. In filing such maps or plats the initial and terminal points will be fixed as indicated in paragraph (c) (6) and (7) of this section.

(10) *Connections with public survey corners.* Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. The map or plat should show these distances and the station numbers at the points of intersection. When field notes are submitted, they should also contain these distances and station numbers.

(11) *Statement and certificate required.* The engineer's statement and president's certificate must be written on the map, and must both designate by termini and length, in miles and decimals, the line of route for which right-of-way application is made. (See Forms 3 and 4, Appendix A.) Station grounds must be described by initial point and area in acres (see Forms 7 and 8, Appendix A), and when they are on surveyed land the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein.

(12) *Spurs or branch lines.* Where right-of-way is desired for spurs or short branch lines which will not greatly enlarge the size of the map, they may be shown on the same map with the main line, and should be separately described in the forms by termini and length. For longer branch lines separate maps should be filed.

(13) *Notations on maps and records.* When maps are filed, the manager will note on each the name of the land office and the date of filing, over his written signature. Notations will also be made on the records of the land office, as to each unpatented tract affected, that application for right-of-way is pending, giving date of filing and name of applicant. The manager will certify on each map, over his written signature, that unpatented land is affected by the proposed right-of-way. The maps and field notes will be approved by the manager in duplicate. Any valid right existing at the date of the filing of the right-of-way application will not be affected by the filing or approval thereof. If no unpatented land is involved in the application the manager will reject it, allowing the usual right of appeal.

§ 2842.2–2 Evidence of construction.

When the railroad is constructed, a statement of the engineer and certificate of the president (Forms 5 and 6, Appendix A) must be filed in the land office, in duplicate. No new map will be required, except in case of deviations from the right-of-way previously approved, whether before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case. The map must show clearly the portions amended, or bear a statement describing them, and the location must be described in the forms as the amended survey and the amended definite location. In such cases the company must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the manager.

This Circular replaces Circulars 2265 and 2267.

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Circular No. 2326

REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

Power Transmission Lines

43 CFR 2850

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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PART 2850—POWER TRANSMISSION LINES

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Subpart 2850—Power Transmission Lines, General

§ 2850.0–3 Statutory authority.

(a) The act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(b) The act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(c) The applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U.S.C. 791–825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3(11) of the act, excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D.C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2.

§ 2850.0–5 Definitions.

(a) The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (M. 30846), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

§ 2850.0–8 Lands subject to grant.

Permission may be given under the act of February 15, 1901, and the act of March 4, 1911, for a right-of-way over unsurveyed lands as well as surveyed lands.

Subpart 2851—Principals and Procedures, Power Transmission Lines

§ 2851.1 Nature of interest.

§ 2851.1–1 Terms and conditions.

(a) By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case, in addition to those specified in § 2801.1–5.

(1) To protect in a workmanlike manner, at crossings and at places in proximity to his transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact, and all highways and railroads from obstruction, and to maintain his transmission lines in such manner as not to menace life or property.

(2) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

(3) Each application for authority to survey, locate, commence construction work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 33 kilovolts or higher under this subpart shall be referred by the authorized officer to the Secretary of the Interior to determine

the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility will not conflict with the program of the United States the authorized officer, upon notification to that effect, will proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant will result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements covering costs and other appropriate factors.

(4) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive or conductive interference.

(5) An applicant for a right-of-way for a transmission facility having a voltage of 33 kilovolts or more must, in addition to the requirements of § 2802, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(i) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(ii) The Department of the Interior shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder of the grant (subsequently referred to in this paragraph as "holder") for the transmission of electric power and energy in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and to utilize the increased capacity for the transmission of electric power and energy. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(*a*) When the Department desires to utilize surplus capacity thought to exist in the transmission facility, notification will be given to the holder and the holder shall furnish to the Department within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(*b*) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information the authorized officer shall determine, as a matter of fact, if surplus capacity is available and, if so, the amount of such surplus capacity.

(*c*) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(*d*) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(*e*) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and, except in emergencies, shall maintain in a closed position all connections under the holder's control necessary to the transmission of the Department's power and energy over the holder's transmission facilities. The parties may by mutual consent open any switch where necessary or desirable for maintenance, repair or construction.

(*f*) The transmission of electric power and energy by the Department over the holder's transmission facilities will be effected in such manner, as will not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the transmission facility which has been provided at the Department's expense.

(*g*) The holder will not be obligated to allow the transmission of electric power and energy by the Department to any person receiving service from the holder on the date of the filing of the application for a grant, other than statutory preference customers including agencies of the Federal Government.

(*h*) The Department will pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy, the payment to be an amount in dollars representing the same proportion of the total monthly cost of

such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost will be determined in accordance with the system of accounts prescribed by the Federal Power Commission, exclusive of any investment by the Department in the part of the transmission facilities utilized by the Department.

(*i*) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department, the holder needs for the transmission of electric power and energy in connection with its operations the whole or any part of the capacity of the transmission facility theretofore certified or determined as being surplus to its needs, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification or determination shall not affect the right of the Department to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this section.

(*j*) If the Department and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the authorized officer shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the authorized officer are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on the Department and the holder.

(*k*) As used in this section, the term "transmission facility" includes (*a*) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (*b*) the entire transmission line and associated facilities, from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(*l*) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Secretary of the Interior or his designee.

(b) Unless otherwise specified in a right-of-way granted under the act of March 4, 1911, and unless sooner canceled, the right-of-way shall expire 50 years from the date thereof. If, however, within the period of 1 year prior to the expiration date, the grantee shall file, in accordance with § 2802.1, a written application to renew the right-of-way, and shall agree to comply with all the laws and regulations existing at such expiration date governing the occupancy and use of the lands of the United States for the purpose desired, the right-of-way may be renewed for a period of not to exceed 50 years. If such application is filed, the existing right-of-way will be extended subject to then existing and future rules and regulations, pending consideration of the application.

(31 Stat. 790, 36 Stat. 1253; 43 U.S.C. 959, 961)

§ 2851.2 Procedures.

§ 2851.2–1 Applications.

(a) *Applications filed.* Application under the act of February 15, 1901, or the act of March 4, 1911, for permission to use the desired right-of-way through the public lands and reseravtions must be filed and approved before any rights can be claimed thereunder.

(b) *Applications for lands in national forests and other reservations,* (1) Applications under the act of February 15, 1901, for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with section 2802.1. (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(2) Applications for a right-of-way under the act of March 4, 1911, involving lands under the control of a department or agency other than the Department of the Interior should be prepared in accordance with the regulations issued by such department or agency and submitted to the proper officer thereof. (See 29 Op. Atty. Gen. 303.)

(c) *Required showings.* (1) A description of the plant or connecting generating plants which generate or will generate the power to be transmitted over such line, such description to be in sufficient detail to show, to the satisfaction of the authorized officer, the character, capacity, and location of such plants.

(2) A description of the transmission line of which the line for which a right-of-way is requested forms a part, giving in reasonable detail the points between which it will extend, its characteristics and purpose. There must also be included a statement as to the voltage for

which the line is designed and at which it is to be operated initially, and a statement as to whether it is to serve a single customer, or a number of customers, or is intended to transmit power solely for the applicant's use. If the line is to serve a single customer or is for the applicant's own use, the nature of such use must be given (such as airway beacon, coal mine, and irrigation pumps).

(3) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the centerline unless sufficient justification is furnished for a greater width and it is otherwise authorized by law.

(4) If the line is to have a nominal voltage of 33 kilovolts or over, the application should include a one-line diagram of the proposed line and the immediate interconnecting facilities including power plants and substations, a power flow diagram for proposed line and connecting major lines showing conditions under normal use, and typical structure drawings of proposed line showing construction dimensions and list of materials.

(5) Any application under the act of March 4, 1911 for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(6) (i) A detailed description of the environmental impact of the project shall be included with the application. It shall provide, among other things, information about the impact of the project on airspace, air and water quality, scenic and esthetic features, historical and archeological features, and wildlife, fish, and marine life.

(ii) The proposed site, design, and construction of the project shall be consistent with the "Environmental Criteria for Electric Transmission Lines," prescribed jointly by the Secretary of the Interior and the Secretary of Agriculture, as well as such other environmental critera and guidelines as the Department shall from time to time prescribe. "Environmental Criteria for Electric Transmission Systems" is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20420.

(iii) If all other requirements are met, the application may be approved if it is determined that the beneficial purposes and effects of the project wil not be outweighed by an adverse environmental impact. If the authorized officer determines that the application cannot be approved as proposed, he will, whenever possible, suggest alternative routes or methods of construction, or other modifications which if adopted by the applicant would make the application acceptable.

§ 2851.3 Boulder Canyon Project.

Section 5(d) of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617d), authorizes the use by any agency receiving a contract for the purchase of electrical energy from Boulder Canyon Project of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

This Circular replaces Circulars 2265 and 2282.

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REGULATIONS PERTAINING TO

RIGHTS-OF-WAY

Coal Development

43 CFR 2803

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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Circular No. 2327

REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

Communications

43 CFR 2860

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Reprint
MARCH 28, 1972

PART 2860—COMMUNICATIONS

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Subpart 2861—Radio and Television Sites

§ 2861.0–3 Authority.

The act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

§ 2861.0–5 Definitions.

The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (M. 30846), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

§ 2861.1 Procedures.

(a) Applications under the act of February 15, 1901, for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with § 2802.1. (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(b) Applications for a right-of-way under the act of March 4, 1911, involving lands under the control of a department or agency other than the Department of the Interior should be prepared in accordance with the regulations issued by such department or agency and submitted to the proper officer thereof. (See 29 Op. Atty. Gen. 303.)

(c) Any application under the act of March 4, 1911, for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

(d) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4, Appendix B by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act of February 15, 1901. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land survey.

Subpart 2862—Telephone and Telegraph Lines

§ 2862.0–3 Authority.

(a) The act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission

lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(b) The act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), as amended, authorizes the head of the department having jurisdiction over the lands, under general regulations fixed by him, to grant an easement for rights-of-way for a period not exceeding 50 years, over and across public lands and reservations of the United States, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes and for radio, television and other forms of communication transmitting, relay and receiving structures and facilities to the extent of 200 feet on each side of the center line of such lines and poles and not to exceed 400 feet by 400 feet for superstructures and facilities to any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

§ 2862.0–5 Definitions.

The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (M. 30846), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

2862.1 Procedures.

(a) Applications under the act of February 15, 1901, for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with § 2802.1. (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(b) Applications for a right-of-way under the act of March 4, 1911, involving lands under the control of a department or agency other than the Department of the Interior should be prepared in accordance with the regulations issued by such department or agency and submitted to the proper officer thereof. (See 29 Op. Atty. Gen. 303.)

(c) Any application under the act of March 4, 1911, for a line right-of-way in excess of 100 feet in width or for a structure or facility right-of-way of over 10,000 square feet must state the reasons why the larger right-of-way is required. Rights-of-way will not be issued in excess of such sizes in the absence of a satisfactory showing of the need therefor.

This Circular replaces Circular 2265.

Circular No. 2328

REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

Water Facilities

43 CFR 2870

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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Subpart 2871—Irrigation

§ 2871.0–3 Authority.

(a)(1) Act of March 3, 1891, as amended. Section 18 of the act of March 3, 1891 (26 Stat. 1101), as amended by the acts of March 4, 1917) (39 Stat. 1197), and May 28, 1926 (44 Stat. 668; 43 U.S.C. 946) authorizes the Secretary to grant rights-of-way for irrigation and drainage purposes over public lands and reservations to the extent of the ground occupied by the water of any reservoirs and any canals and laterals and 50 feet on each side of the marginal limits thereof and such additional right-of-way as may be deemed necessary for the proper operation and maintenance of said reservoirs, canals, and laterals.

(2) Section 19 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 947), provides that a map of the canal or ditch and reservoir must be filed within twelve months after the location of ten miles of a canal if the same be upon surveyed lands, and if upon unsurveyed lands within twelve months after the survey thereof by the United States; that upon the approval thereof by the Secretary, the same shall be noted upon the record and thereafter all lands affected by such right-of-way shall be disposed of subject to such right-of-way.

(3) Section 20 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 948), provides that this act shall apply to all canals, ditches, or reservoirs theretofore or thereafter constructed, whether by corporations, individuals, or association of individuals, on the filing of the certificates and maps as therein provided; that if any section of the project is not completed within 5 years after location, the right-of-way shall be forfeited as to the uncompleted canal, ditch, or reservoir, to the extent that the same is not completed at the date of forfeiture.

(4) Section 21 of the act of March 3, 1891 (26 Stat. 1102; 43 U.S.C. 949), provides that nothing in this act shall authorize the occupancy of such right-of-way except for the purpose for which it was approved, and then only so far as may be necessary for the construction, maintenance, and care of the project.

(5) The act of March 3, 1891, as amended, is applicable to rights-of-way for pipelines, flumes, or other conduits, although they are not specifically mentioned in the act, if water is conveyed primarily for irrigation or drainage purposes.

(6) Material on adjacent lands: The word "adjacent", as used in section 18 of the act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L.D. 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L.D. 566). These decisions were rendered under the Railroad Right-of-Way Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934), and are applied to the act of March 3, 1891, since the wording with respect to the use of material is the same.

(b) Section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U.S.C. 951), authorizes the use of rights-of-way approved under the act of March 3, 1891, for purposes subsidiary to the main purpose of irrigation.

(c) The act of March 1, 1921 (41 Stat. 1194; 43 U.S.C. 950), authorizes the Secretary, except as to lands within national forests, to grant permits or easements for not to exceed 5 acres of ground adjoining the right-of-way at each of the locations, to be determined by the Secretary, to be used for the erection thereon of dwellings or other buildings or corrals for the convenience of those engaged in the care and management of the works provided for by the act of March 3, 1891, as amended.

(d) The act of May 28, 1926 (44 Stat. 668; 43 U.S.C. 946), amended section 18 of the act of March 3, 1891, so as to authorize, if needed, a right-of-way additional to the 50 feet allowed by the section for operation and maintenance of reservoirs, canals, ditches, and laterals. To obtain such additional right-of-way, an explanatory showing must accompany the application. This should consist of a statement by the applicant's engineer or surveyor setting forth succinctly the extent of the additional right-of-way required and the necessity therefor. The additional right-of-way should also be shown graphically by lateral limit lines on the map filed in connection with the application. If additional right-of-way is wanted only for portions or sections of the reservoirs, canals, ditches, or laterals, the termini thereof should be fixed by engineer's survey stations in addition to the lateral limit lines.

§ 2871.0–8 Lands subject to grant.

(a) In *Hugh S. Ritter, Thomas M. Bunn* (A–30415), decided February 24, 1965, the Under Secretary of the Interior ruled that "it would be contrary to the public interest at this time to increase the pressure on the inadequate water supply available for use in California from the Colorado River by classifying * * * public lands as available for disposition

under the desert land law." The lands referred to were in Imperial and Riverside Counties, Calif.

(b) For the reasons stated in the Ritter-Bunn decision, supra, it is contrary to the public interest to permit the use of federally owned lands within Imperial and Riverside Counties for the construction of canals and ditches in order to effect agricultural reclamation with water from the Colorado River of desert lands in those counties. Therefore, no applications for rights-of-way for this purpose under the provisions of the Act of March 3, 1891, as amended, will be allowed or permitted on federally owned lands within Imperial and Riverside Counties, Calif., unless the applicant shows that the water to be carried is from a source other than the Colorado River.

§ 2871.1 Procedures.

(a) When unsurveyed land is involved: (1) Maps filed under the said act, as amended, showing canals, ditches, laterals, and reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps conform to these regulations, but the approval will only relate to that portion of the right-of-way traversing the surveyed land.

(2) Maps showing canals, ditches, laterals, and reservoirs lying wholly on unsurveyed lands may be received and placed on file in the Bureau of Land Management for general information. The date of filing will be noted thereon; but the maps will not be approved as the act makes no provision for the approval of any but maps showing locations on surveyed lands. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified in the act, and if the maps are regular in all respects they will receive the manager's approval.

(b) By letter of August 21, 1937, approved by the Department in the case of the Twin Lakes Reservoir and Canal Company (Denver 045465), it was held that a right-of-way may be acquired under the 1891 act, by actual construction of a project in advance of the filing of an application and approval of the right-of-way over unsurveyed lands, upon the same principle applied to railroads under the act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–939).

(c) The act of February 26, 1897 (29 Stat. 599; 43 U.S.C. 664), permits the approval of applications under the act of March 3, 1891, for rights-of-way upon reservoir sites reserved under authority of the act of October 2, 1888 (25 Stat. 526; 43 U.S.C. 662), and August 30, 1890 (26 Stat. 371, 391; 43 U.S.C. 662).

Subpart 2872—Watering Livestock

§ 2872.0–3 Authority.

(a) By the act of January 13, 1897 (29 Stat. 484; 43 U.S.C. 952–955), it is provided that any person, livestock company, or transportation corporation engaged in breeding, grazing, driving, or transporting livestock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such livestock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding 160 acres, so long as such reservoir is maintained and water kept therein for such purpose. The act does not apply to lands in grazing districts, and applications for stock-watering reservoirs on such lands should be filed under section 4 of the Taylor Grazing Act (48 Stat. 1271; 43 U.S.C. sec. 315c) and Part 4110 of this chapter.

(b) Section 1 of the act of January 13, 1897, as amended by the act of March 3, 1923 (42 Stat. 1437; 43 U.S.C. 952), authorizes the Secretary of the Interior, in his discretion, under such rules, regulations, and conditions as he may prescribe, upon application by such person, company, or corporation, to grant permission to fence reservoirs constructed under the act of January 13, 1897, in order to protect livestock, to conserve water, and to preserve its quality and conditions, provided, that such reservoir shall be kept open to the free use of any persons desiring to water animals of any kind.

§ 2872.1 Procedures.

(a) *Declaratory statement—Form of application.* To apply for a reservoir site under this section, the applicant must file with the manager a declaratory statement drawn in accordance with Form 7, Appendix B together with a nonrefundable application service fee of $10. No other application is necessary.

(b) *Action on declaratory statements; size, location, and number of reservoir sites.* In acting upon these statements the following general rules will be applied:

(1) No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity, not more than 40 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity, not more than 80 acres can be reserved. For a reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity, not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more, 160 acres may be reserved. In the case where the water is furnished the livestock by artificial means, such as by windmill, pump, tanks, and troughs, the regulations requiring a minimum capacity of 250,000 gallons may be waived upon the claimant's submitting a satisfactory showing that by such artificial means he will be able to furnish sufficient water and provide proper troughs and facilities to properly accommodate all cattle likely to water at the place in question.

(2) Not more than 160 acres shall be reserved for this purpose in any section.

(3) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(4) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(5) Lands so reserved shall be kept open to the free use of any person desiring to water animals of any kind. If the lands so reserved are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use them for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(6) Notwithstanding his action in accepting any such declaratory statement, the manager will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

§ 2872.2 Time for construction.

The reservoir must be constructed and completed within 2 years after the filing of the declaratory statement; otherwise the right-of-way will be subject to cancellation.

§ 2872.3 Map of constructed reservoir.

After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped showing its location with relation to the public land surveys. The map must be prepared in accordance with the requirements of § 2802.1–5 and be filed with the manager and must bear Forms 8 and 9, Appendix B.

§ 2872.4 Approval of constructed project.

(a) *Adjudication and notation of records.* The map and papers will be examined to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory, they will be approved, and the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the act. When such reservation is made the manager will make the proper notations on his records.

(b) *Annual proof of maintenance.* In order that this reservation shall be continued, it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required, during the month of January of each year to file with the manager a statement to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the act have been complied with. Form 10 Appendix B will be used for this statement. Upon failure to file such statement, steps will be taken looking to the revocation of the reservation of the lands.

§ 2872.5 Procedure when unsurveyed land is involved.

(a) In any case where the proposed reservoir is to be located upon unsurveyed public land, the declaratory statement may be filed, the land being therein described by metes and bounds and, as well, by the description which it is believed it will bear when officially surveyed. Proof of construction must be submitted at the end of the same period of time and in the same manner as is prescribed and required in cases where the lands have been previously surveyed. Such proof should embrace the field notes and a plat of survey such as is required in cases of reservoirs on surveyed lands, with such modifications as are necessary. (See § 2872.3.)

(b) Any reservation made pursuant to the act of January 13, 1897, secures only a license to use and occupy the reserved land with and for a reservoir, and this license may endure permanently or may be of transient duration. No estate in the land is granted. For this reason it is administratively undesirable that private surveys made pursuant to the statute and this section shall be preserved and established by subsequent public-land surveys and approved plats thereof. Therefore, when the public-land surveys have been extended over land covered by a reservoir declaratory statement affecting unsurveyed lands, the declarant shall adjust his survey to the line of the official survey showing the location of the reservoir with respect to said lines by means of properly established tie lines. Any subsequent reservation which may be ordered will be of those subdivisions or aliquot parts of subdivisions thus shown to be occupied by or necessary for the proper use of the reservoir.

(c) An annual statement of maintenance must be submitted the same as though the reservoir had been constructed on surveyed lands. Nothing in this section shall preclude the Bureau of Land Management from requiring additional information in any case where that information is deemed proper or necessary.

§ 2872.6 Application to fence reservoir; plat required.

Any person, company, or corporation desiring to secure the benefits of the act of March 3, 1923, should file in accordance with § 2801.1, an application, duly corroborated by at least two disinterested witnesses, setting forth such facts as would show that it is necessary to fence such reservoir in order to protect the livestock, to conserve water, and to preserve its quality and conditions. There should be filed with such application, and as a part thereof, a plat showing the land embraced in the reservoir as near as may be, the location of the proposed fence with respect to such

reservoir, together with all gates or other openings and roadways leading to the same. In no instance will an application be considered unless said plat shows the location of at least two gates. Said gates shall be so constructed and maintained that they may be, at all times, readily opened and closed by any person desiring to water animals of any kind, and such gates shall be so placed as to be readily accessible from the road or roads nearest the reservoir, which roads shall be the ones usually traveled and, where there are no such roads to govern the location of such gates, they shall be so situated as to make the reservoir readily available from the adjacent public or other range. There shall be posted on the gates, and elsewhere if necessary, a notice stating that the reservoir is for stock-watering purposes, located on public lands, and that the same is open to the free use of any person desiring to water animals of any kind.

Subpart 2873—Water plants

§ 2873.0–3 Statutory authority.

(a) The act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), authorizes the Secretary, under such regulations as he may fix, to permit the use of rights-of-way through public lands and certain reservations of the United States, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for pipe lines, canals, ditches, water plants, and other purposes to the extent of the ground occupied by such canals, ditches, water plants, or other works permitted thereunder and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipe lines, telephone and telegraph lines, and transmission lines, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted under the act.

(b) The applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U.S.C. 791–825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3(11) of the act, excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D.C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2.

§ 2873.0–5 Definitions.

(a) The opinion of the Solicitor of the Department of the Interior of November 1, 1940 (M. 30846), held that lands acquired by the United States, by purchase or otherwise, were reservation lands within the meaning of the acts of February 15, 1901, and March 4, 1911.

§ 2873.1 Procedures.

(a) *Applications for lands in national forests and other reservations.* Applications under the act of February 15, 1901, for rights-of-way across national forests should be prepared in accordance with the regulations issued by the Department of Agriculture and submitted to the proper officer thereof. In case a right-of-way is desired upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer, and the other filed in accordance with section 2801.1. (See section 1 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 472).)

(b) *Applications which may be submitted under the acts of February 15, 1901, and March 4, 1911.* (1) All applications where it is sought to acquire a right-of-way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946–949), and section 2 of the act of May 11, 1898 (30 Stat. 404; 43 U.S.C. 951), must be submitted under the 1891 and 1898 acts, in accordance with the applicable regulations in this part.

(2) An application may be filed under the act of February 15, 1901, for a stock-watering reservoir site. Rights-of-way will not be approved for stock-watering reservoirs on wildlife refuges. An application under the act for a "water plant" site or for a pipeline right-of-way may include an area for a well to supply the water; but if, because the lands affected are within a grazing district established under the Taylor Grazing Act of June 28, 1934 (43 Stat. 1269; 43 U.S.C. 315 et seq.), as amended, or for any other reason, the granting of a right-of-way for a stock-watering reservoir site, or for a water plant site or for a pipeline would adversely affect the interest of the Government, the application therefor will not be allowed. If the lands affected are within a grazing district, an application for a stock-watering reservoir or water well site should be filed under section 4 of said act of June 28, 1934, if the applicant is qualified under the section and if the reservoir or well is necessary to the care and management of the permitted livestock and primarily for that purpose. Regulations under the said section 4 are contained in § 4115.2–5(a) of this chapter.

(c) *Plant sites; buildings to be platted on maps.* (1) When an application is made for a right-of-way for a site for a water plant or for a communication structure or facility, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4, Appendix B by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act of February 15, 1901. If the right-of-way is within reservation lands which are not covered by the public land surveys, the map shall be made in terms of the boundary survey of the reservation to the extent it would be required above to be made in terms of the public land survey.

(2) If the application is for a powerplant site it must also contain a statement giving a description of the proposed powerplant including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the project and whether the powerplant is to be interconnected with other generating facilities owned by the applicant or others; and whether the power generated is to be sold to others at wholesale or retail or used by the applicant for its own domestic, agricultural, or industrial purposes.

This Circular replaces Circular 2265.

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Circular No. 2329

REGULATIONS PERTAINING TO:

RIGHTS-OF-WAY

For Mineral Leasing Purposes

43 CFR 2880

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Reprint
MARCH 28, 1972

PART 2880—FOR MINERAL LEASING PURPOSES

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Subpart 2881—For Oil and Natural Gas Pipe Lines and Pumping Plant Sites Under the Mineral Leasing Act

§ 2881.0–3 Authority.

(a) Section 28 of the act of February 25, 1920 (41 Stat. 449), as amended by the acts of August 21, 1935 and August 12, 1953 (49 Stat. 678; 67 Stat. 557; 30 U.S.C. 185), authorizes the Secretary to grant rights-of-way through public lands, including the forest reserves of the United States, for pipeline purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of the act (41 Stat. 437; 30 U.S.C. 22, 48, 181) to the extent of the ground occupied by the said pipeline and 25 feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by him, and upon the express conditions that such pipeline, if for oil, or for natural gas and not excepted from the common carrier provisions of section 28 of the act of February 25, 1930, as amended, as stated in paragraph (b) of this section shall be constructed, operated, and maintained as a common carrier and that every pipeline holder shall accept, convey, transport, or purchase without discrimination oil or natural gas produced from Government lands in the vicinity of the pipeline in such proportionate amount as the Secretary of the Interor may, after a full hearing, with due notice thereof to the interested parties, and a proper finding of facts, determine to be reasonable.

(b) The amendatory act of August 12, 1953, cited in paragraph (a) of this section provides that the common carrier provisions of section 28 of the act of February 25, 1920, shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (52 Stat. 821; 15 U.S.C. 717w) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

§ 2881.0–8 Land subject to grant.

By opinion of the Attorney General of January 3, 1941 (40 Op. Atty. Gen. 9), and departmental decision, Chiles P. Plummer, A–23988, February 24, 1945, this statute was construed as not applying to purchase or acquired lands as they are not considered public lands within the meaning of the act.

§ 2881.1 Applications.

(a) *Common carrier stipulation.* Each application for a pipeline right-of-way, if for oil, or for natural gas and the pipeline has not been excepted from the common carrier provisions of section 28 of the act of February 25, 1920, as amended, as stated in paragraph 2881.0–3 (b) of this section, must include the following stipulation:

> The applicant agrees to operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act, and, within 30 days after the request of the Secretary of the Interior, to file rate schedule and tariff for the transportation of oil or gas, as the case may be, as such common carrier with any regulatory agency having jurisdiction over such transportation, as the Secretary may prescribe.

(b) *Use of pipeline.* The applicant shall state in the application the specific use, within the purview of the act, to which the pipeline is to be put, and any approval of the right-of-way shall be limited to such use, unless otherwise stated in the approval. No change in the use of the pipeline from that authorized by the approval of the right-of-way shall be allowed except as follows:

(1) In the case of pipelines engaged in interstate transportation, a change may be made only with approval first obtained from the authorized officer, and upon such terms and conditions as he may prescribe as a prerequisite to the approval of the change of use. If the authorized officer does not disapprove or otherwise act upon an application for a change in use by the end of the forty-fifth day after the application is filed, he shall be deemed to have approved it without conditions other than those previously existing.

(2) In case of pipelines engaged solely in intrastate transportation, a change may be made by the grantee in the use of pipeline for the transportation of products within the purview of the act, from that specified in the approval of the right-of-way, provided, written notice of such change is filed with the manager not less than 15 days in advance of the actual change of use. Such notice must be accompanied by a showing as to whether the change in use is to be temporary or permanent, and a statement that such change will not result in any hardship or injustice to persons operating under Federal leases who may be dependent on the pipeline as the means of transportation of their products to existing markets, and must be accompanied by the consent in writing of such lessees to the change of use.

§ 2881.2 Approval of right-of-way.

The approval of such right-of-way shall be subject to the express conditions that the use of the pipeline for the transportation of oil, gas, or other similar products, shall be limited to such products produced in conformity with State and Federal laws, including laws prohibiting waste.

§ 2881.3 Pumping plant site.

A site for a pumping station or other structures reasonably necessary to the operation of a pipeline on a right-of-way approved under section 28 of the act of February 25, 1920, or as amended by the act of August 21, 1935, may be granted under the same sections (36 Op. Atty. Gen. 480). When an application is made for a right-of-way for a site, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described on Forms 3 and 4, Appendix B by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The application must also state the proposed use of each structure, and must show definitely that each one is necessary for a proper use of the right-of-way for the purpose contemplated in the act.

(Sec. 28, 49 Stat. 678, as amended; 30 U.S.C. 185)

Subpart 2882—Over Lands Subject to Mineral Lease

§ 2882.0–3 Authority.

Section 29 of the act of February 25, 1920 (41 Stat. 449, 30 U.S.C. 186), provides in part:

(a) That any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes.

(b) Where another statutory provision covers the type of right-of-way desired, applications shall be made in accordance with such statute and the applicable regulations.

(c) Where there is no other statutory provision covering the type of right-of-way desired, applications shall be filed in accordance with §§ 2800.0–1 to 2802.5 inclusive.

Subpart 2883—For Pipe Lines on the Outer Continental Shelf (Act of August 7, 1953)

§ 2883.0–3 Authority.

Section 5(c) of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 464), authorizes the Secretary of the Interior to grant rights-of-way for pipeline purposes for the transportation of oil and gas. The purpose of the regulations in this part is to set forth the rules governing the granting and administration of such rights-of-way. The inclusion of this part in this title shall not be construed as an interpretation that the laws and regulations pertaining to public lands or to rights-of-way thereon are applicable to the submerged lands of the Outer Continental Shelf.

Compliance with the regulations of this part does not obviate the necessity of compliance with requirements and regulations of the Department of the Army and the Coast Guard with respect to prevention of obstruction to navigation, lights, and warning devices, and other matters relating to safety of life and property, as authorized by section 4 of the act.

§ 2883.0–5 Definitions.

"Right-of-way" includes the site on which the pipe line and associated structures are situated which shall not exceed 200 feet in width for pipe lines and be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage, or treating of the production from a lease or leases. The construction of gathering lines may be approved by the Oil and Gas Supervisor in accordance with the provisions of 30 CFR 250.18 and 250.68.

§ 2883.1 Nature of grant.

(a) *Terms and conditions.* An applicant by accepting a right-of-way grant, agrees and consents to comply with and be bound by the following terms and conditions, accepting those which the Secretary may waive in a particular case:

(1) To comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf and the protection of correlative rights therein.

(2) To pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and to indemnify the United States

against any and all liability for damages to life, person, or property arising from the occupation and use of the area covered by the right-of-way.

(3) To keep the Director informed at all times of his address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision in all subcontracts.

(4) That the allowance of the right-of-way shall be subject to the express condition that the rights granted will not prevent or interfere in any way with the management, administration of, or the granting either prior or subsequent to the right-of-way grant of other rights by the United States in the submerged lands affected thereby, and that he agrees and consents to the occupancy and use by the United States or its lessees or other right-of-way holders of any part of the right-of-way not actually occupied or necessarily incident to its use for any necessary operations involved in such management, administration or the enjoyment of such other granted rights.

(5) To pay for the first calendar year or fraction thereof, and thereafter annually in advance an annual rental of $5 for each mile or fraction thereof traversed by the right-of-way and $50 for each area applied for as the site for a pumping station or other accessory to the right-of-way. Payments required herein may be annual, for a 5-year period or for multiples of such period.

(6) That upon revocation or termination of the right-of-way, unless the requirement is waived in writing by the Manager, he shall, so far as reasonably possible, restore the area of the right-of-way to its original condition.

(b) *Penalty for failure to comply.* As provided in the act, failure to comply with the act, regulations or any conditions prescribed by the Secretary as to the application therefor and the survey, location and width thereof and upon the express condition that such oil or gas pipe lines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipe line in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things conservation and the prevention of waste, be grounds for forfeiture of the grant in an appropriate, judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 4(b) of the act. Upon relinquishment of any right-of-way or forfeiture of the grant, the right-of-way owner will be required to remove his improvements within one year from the effective date of such relinquishment or forfeiture unless otherwise provided by law or in the decree of forfeiture.

(c) *Term of grant.* Any right-of-way granted hereunder shall be for so long as the pipe line is maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Cessation of use temporarily shall not terminate the grant, but if the purpose of the grant ceases to exist or use of the pipe line is permanently discontinued for any reason the grant shall be subject to forfeiture.

§ 2883.2 Procedures.

§ 2883.2–1 Applications.

(a) *Form and content.* No special form of application is required. The application should be filed in duplicate and should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the act and these regulations and that applicant agrees that the right-of-way if approved will be subject to the terms and conditions of the regulations in this part. It should also state the primary purpose for which the right-of-way is to be used. The application must be filed in duplicate at the office of the Manager. If the right-of-way has been utilized prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date applicant obtained control of the improvements. A filing fee of $10 and the rental required herein under subparagraph 2883.3(a)(5), must accompany the application.

(b) *Map showing survey.* Each copy of the application must be accompanied by a map , showing the center line of the right-of-way, properly identified so that the right-of-way may be accurately located by a competent engineer. The map should comply with the following requirements:

(1) The scale shall be at least 1:160,000.

(2) Courses and distances of the center line of the right-of-way shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipe line specified.

(4) The initial and terminal points of the right-of-way shall be accurately located by latitude and longitude or by grid references.

(5) Each copy of the map shall bear upon its face a statement of the engineer who made the map that the right-of-way is accurately represented upon the map.

(c) *Persons qualified to acquire and hold rights-of-way.* (1) Applications may be filed by citizens of the United States, associations of such citizens, and by corporations organized under the laws of the United States or of any State or Territory thereof.

Circular No. 2330

REGULATIONS PERTAINING TO:

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RIGHTS-OF-WAY

Miscellaneous Rights-of-Way

43 CFR 2890

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Reprint
MARCH 28, 1972

PART 2890—MISCELLANEOUS RIGHTS-OF-WAY

Subpart 2891—Through National Forests (Act of February 1, 1905)

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Subpart 2892—Easements on Real Property

2892.0–3 Authority.
2892.0–5 Definitions.
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2892.1 Applicability of regulations.
2892.2 Termination of easement.

Subpart 2891—Through National Forests (Act of February 1, 1905)

§ 2891.0–3 Authority.

Section 4 of the act of February 1, 1905 (33 Stat. 628; 16 U.S.C. 524), grants rights-of-way through national forests to citizens and corporations of the United States, for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, for municipal or mining purposes, and for the purpose of the milling and reduction of ores, during the period of the beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are respectively situated.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2891.1 Procedures.

§ 2891.1–1 When construction may commence.

No construction will be allowed in national forests until an application for right-of-way has been regularly filed in accordance with §§ 2800.01 to 2802.5 and this subpart 2991 and has been approved, or unless permission for construction in advance of the right-of-way grant has been specifically given.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2891.1–2 Water plant structures.

When application is made for a right-of-way for water plants, § 2861.1(d) should be followed, with appropriate changes in the prescribed forms.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

§ 2891.1–3 Procedure when unsurveyed land is involved.

Maps showing reservoirs, canals, water plants, and other structures wholly upon unsurveyed lands, will be received and acted upon in the manner prescribed for surveyed lands.

(Sec. 4, 33 Stat. 628; 16 U.S.C. 524)

Subpart 2892—Easements on Real Property

§ 2892.0–3 Authority.

The act of October 23, 1962 (76 Stat. 1129), authorizes executive agencies to grant easements for rights-of-way or other purposes in, over, or upon real property of the United States under the control of such agencies, to a State or political subdivision or agency thereof, or to any person. The authority conferred by this act is in addition to, does not affect, nor is it subject to, any other law under which an executive agency may grant easements.

§ 2892.0–5 Definitions.

As used in this section of the regulations:

(a) The word "State" means any of the States of the Union.

(b) The word "person" includes any corporation, partnership, firm, association, trust, estate, or other entity.

(c) The term "real property of the United States" excludes the public lands (including minerals, vegetative, and other resources) in the United States, including lands reserved or dedicated for national forest purposes, lands administered or supervised by the Secretary of the Interior in accordance with the act of August 25, 1916 (39 Stat. 535), as amended and supplemented, Indian-owned trust and restricted lands, and lands acquired by the United States primarily for fish and wildlife conservation purposes and administered by the Secretary of the Interior, lands withdrawn from the public domain primarily under the jurisdiction of the Secretary of the Interior, and lands acquired for national forest purposes.

§ 2892.0–6 Policy.

Easements shall not be granted under this section if they can be granted under any other section of this subpart.

§ 2892.0–8 Lands subject to grant.

The regulations of this section do not apply to any public domain lands, nor to any acquired lands which are administered by the National Park Service, the Fish and Wildlife Service, and the Bureau of Indian Affairs. They are applicable to other acquired lands administered by the Department of the Interior in the States.

§ 2892.1 Applicability of regulations.

In addition to meeting the requirements of this section, easements granted under this section shall meet all other requirements in Group 2800 relating to the use applied for, unless waived by the authorized officer.

§ 2892.2 Termination of easement.

(a) All easements granted under this section shall provide for the termination of the easement in whole or in part upon written notice from the authorized officer, to the grantee, or its successors or assigns, if there has been—

(1) A failure to comply with any term or condition of the grant, or

(2) A nonuse of the easement for a consecutive two-year period for the purpose for which granted, or

(3) An abandonment of the easement.

(b) The termination shall be effective as of the date of such notice.

This Circular replaces Circular 2265.

GPO 841-424

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2331]

OIL AND GAS LEASES

Payment of Bids

PART 3120—COMPETITIVE LEASES

1. In § 3120.3–2 the words "within 30 days from receipt thereof" are changed to read "not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later."

Replaced by Circ 2334

PART 3300—OUTER CONTINENTAL SHELF LEASING; GENERAL

2. In § 3302.5 the words "within 30 days from his receipt thereof" are changed to read "not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later."

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

3. In § 3521.3–2(a) the words "within 30 days from receipt thereof" are changed to read "not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later."

PART 3560—SPECIAL LEASING ACT

4. In § 3562.4–4(a) the words "within 30 days from receipt thereof" are changed to read "not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later."

HARRISON LOESCH,
Assistant Secretary of the Interior.

MAY 15, 1972.

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Circular Distribution List

This Circular replaces Circular 1555.

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2332]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

PLACE FOR FILING LANDS AND MINERALS APPLICATIONS IN CALIFORNIA

Section 1821.2–1 of Subpart 1821, Title 43 of the Code of Federal Regulations is amended as follows:

1. Paragraphs (a), (b), and (c) are redesignated as (b), (c), and (d), respectively.

2. A new paragraph (a) is added to read as follows:

§ 1821.2–1 Office hours of land offices; place for filing.

(a) As used in Subchapters A, B, and C: (1) "Land offices" are the offices of the Bureau of Land Management in which applications for rights and privileges under Subchapters B and C of this title must be filed. (2) The "Washington Office" of the Bureau of Land Management is headquarters for the Bureau and is located in the Interior Building, Washington, D.C. 20240. (3) "Manager" is the official in charge of a land office.

* * * * *

3. In the list of Land offices in new paragraph (d),

(i) The name "Fairbanks District and Land Office" is changed to read "Fairbanks Land Office".

(ii) The reference to the "Riverside District and Land Office", its address, and area of jurisdiction is deleted in its entirety.

(iii) The area of jurisdiction of the Sacramento Land Office is changed from "Northern California" to "California".

(iv) The address of the Colorado Land Office is changed from "Federal Building, 1961 Stout Street" to "Colorado State Bank Building, 1600 Broadway".

(v) Footnote 2 and the diagram of California designated as "Footnote 2" is deleted.

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 14, 1972.

[FR Doc.72-9223 Filed 6-19-72;8:48 am]

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Circular Distribution List

☆U. S. Government Printing Office: 1972-781-466/221 Region 8

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

[Circular 2333]

PART 23—SURFACE EXPLORATION, MINING AND RECLAMATION OF LANDS

Reclamation Costs

Paragraph (c) of § 23.2 of Part 23, Title 43, Code of Federal Regulations is revised to read as follows:

§ 23.2 Scope.

* * * * *

(c) When more than one permit or contract is expected to be issued to dispose of materials in a particular deposit or tract of land, such as community pits or common use areas, no requirement for reclamation will be made in such permits or contracts and the burden of reclamation will be assumed by the Government. In such cases where reclamation is not required in the permit or contract, the permittee or contracting party shall, in addition to payment of the sales price required under his permit or contract, make a reasonable contribution, as determined by the authorized officer, to defray the cost to the Government of reclamation of the land. Such contribution will be deposited in a separate account. In computing such added contribution, the authorized officer shall establish the estimated cost of reclamation upon completion of extractive operations for the deposit and the estimated total volume of material to be extracted. The contribution shall be a proportionate share of the estimated cost of reclamation in the same ratio as the material sold under the permit or contract bears to the total estimated volume of the deposit which is expected to be extracted.

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 22, 1972.

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Circular No. 2334

REGULATIONS PERTAINING TO:

OIL AND GAS LEASING

As contained in Title 43 of the Code of Federal Regulations

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PART 3100—OIL AND GAS LEASING

Subpart 3100—Oil and Gas Leasing; General

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Subpart 3100—Oil and Gas Leasing

§ 3100.0–3 Authority.

(a) *Public domain.* (1) The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.).

(2) Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181) applies to leases issued prior to the date of that act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

(b) *Acquired lands.* The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359). The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3, effective July 16, 1946 (3 CFR 1946 Supp., chapter IV) except as to leases or permits outstanding on August 7, 1947.

(c) *Withdrawn, reserved and segregated lands*—(1) *Protective leasing.* Issuance of protective leases authorized under sec. 441, Revised Statutes; 5 U.S.C. 485; see also Attorney General's Opinion of April 2, 1941 (Vol. 40 Op. Atty. Gen. 41).

(d) *Special Acts*—(1) *Rights-of-way.* The act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301–306), authorizes the Secretary of the Interior to lease deposits of oil and gas in and under railroad and other rights-of-way acquired under any law of the United States. The right of lease is restricted to the owner of the right-of-way, or his assignees.

(2) *Nevada.* The act of May 9, 1942 (56 Stat. 273) as amended by the act of October 25, 1949 (63 Stat. 886).

(3) *Lands patented to State of California.* The act of March 3, 1933 (47 Stat. 1487) as amended by the act of June 5, 1936 (49 Stat. 1482) and the act of June 29, 1936 (49 Stat. 2026).

(4) *National Forest Lands in Minnesota.* The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(5) *Lake Mead Recreation Area.* The act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(6) *National Forest Wilderness.* Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(7) *Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the act of November 8, 1965 (Public Law 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture within the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

§ 3100.0–5 Definitions.

(a) *Known geologic structure.* A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

(b) *Sole party in interest.* A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

(c) *Regional oil and gas supervisor.* The Regional Oil and Gas Supervisor of the Geological Survey for the region in which lands under lease are situated.

(d) *Rule of approximation.* Where an application embraces an acreage in excess of the acreage limitation, it may be allowed for the excess acreage if exclusion of the smallest legal subdivision involved would result in a deficiency which would be greater than the excess resulting from the inclusion of such subdivision.

§ 3100.0–7 Cross-reference.

43 CFR 16.

§ 3100.0–9 Limitation on time to institute suit to contest a Secretary's decision.

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3100.1 Helium.

§ 3100.1–1 Ownership and rights.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium. (See 43 CFR Part 16.)

§ 3100.2 Minerals subject to leasing.

§ 3100.2–1 Oil and gas.

§ 3100.3 Drainage.

§ 3100.3–1 Compensation for drainage.

Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 3100.3–2 Drilling or payment of compensatory royalty.

Where land in any lease is being drained of its oil or gas content by a

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

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3120.1 Terms.
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3120.1–3 Acreage limitation.
3120.1–4 Qualifications.
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3120.4–2 Deposits on rejected bids.

§ 3120.1 Terms.

§ 3120.1–1 Duration of lease.

All competitive leases shall be for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3120.1–2 Dating of leases.

All competitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made, a lease may be dated the first of the month within which it is so signed.

§ 3120.1–3 Acreage limitation.

(a) *Maximum lease size.* The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible.

(b) *Consolidation of units.* If two or more units are awarded to any bidder, such units where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 3120.1–4 Qualifications.

(a) *Compliance with subpart 3102 is required.*—(1) Statement required. Each bidder must submit with his bid a statement over the bidder's own signature with respect to citizenship and interests held. If the successful bidder is a corporation, it must also file a statement similar to that required by § 3102.4–1.

(b) *Deposit required.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the Manager of the Land Office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him.

§ 3120.2 Notice of lease sale.

§ 3120.2–1 Initiation of offer.

§ 3120.2–2 Publication of notice.

Notice of the offer of lands for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer of the Bureau of Land Management may authorize.

§ 3120.2–3 Contents of notice.

The notice published in a newspaper of general circulation in the county will contain a statement that the successful bidder will be required, prior to the issuance of a lease to pay his proportionate share of the total cost of publication of that notice which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The notice will also state the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale.

§ 3120.3 Approval.

§ 3120.3–1 Award of lease.

Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office.

§ 3120.3–2 Compliance with award notice.

If the lease be awarded, three copies of the lease on a form approved by the Director, with rental and royalty schedules made a part thereof, will be sent to the successful bidder and he will be required not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later to execute them, pay the balance of his bonus bid, the first year's rental and file a bond as required in subpart 3104. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

§ 3120.4 Rejection.

§ 3120.4–1 Failure to comply with award notice.

If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act.

§ 3120.4–2 Deposits on rejected bids.

If any bid be rejected, the deposit will be returned.

PART 3130—FRACTIONAL OR FUTURE INTEREST LEASES AND PERMITS

Subpart 3130—Fractional or Future Interest Leases and Permits

Sec.
3130.1 Competitive and noncompetitive.
3130.2 Rental and royalties.
3130.3 Public domain.
3130.3–1 Fractional interest offers.
3130.4 Acquired lands.
3130.4–1 General statement.
3130.4–2 Consent of agency and stipulations required.
3130.4–3 Forms.
3130.4–4 Fractional present interests.
3130.4–5 Future and fractional interest offers.

§ 3130.1 Competitive and noncompetitive.

Competitive and noncompetitive oil and gas leases for lands in which the United States owns an undivided fractional oil and gas interest may be issued pursuant to the regulations in this part and subpart 3120.

§ 3130.2 Rental and royalties.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in subpart 3103 as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3130.3 Public domain.

§ 3130.3–1 Fractional interest offers.

(a) Application. An offer for a fractional interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with subpart 3111. The offer must be accompanied by a statment showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a noncompetitive fractional interest oil and gas lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such result will be rejected.

§ 3130.4 Acquired lands.

§ 3130.4–1 General statement.

Subject to the provisions of section 3 of the Act, noncompetitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. Applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by §§ 3101.2–3, 3111.1–2 and this section. The terms and conditions of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field, and of compensatory royalty agreements

under § 3100.3–1 covering future or fractional interests, will be established on an individual case basis.

§ 3130.4–2 Consent of agency and stipulations required.

All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project if any, of which the land is a part. Leases to which such consent is necessary will not be issued until lessee executes such stipulations as may be required by the consenting agency.

§ 3130.4–3 Forms.

All oil and gas leases for existing interest on acquired lands whether the Government's interest be full or fractional shall be issued on a form approved by the Director. Leases of future interest and fractional future interest shall be issued on a form approved by the Director.

§ 3130.4–4 Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3130.4–5 Future and future fractional interest offers.

(a) *Application.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at that time will automatically lapse and thereafter only offers for a present interest lease will be considered. There is no required form for an application or offer to lease a whole or fractional future interest. The application or offer therefor should, however, to the extent applicable, conform to and include the information required by §§ 3101.2–3, 3111.1–2, and this section, and must be accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by three copies of such lease or contract. In lieu of an abstract, a certificate of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought, but it shall not include tracts where the United States owns the entire mineral interest at the time the offer is made.

(b) *Effective date of lease.* Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the Government's title to the minerals are different for different tracts, separate leases covering each of such different tracts will be issued.

(c) *Supplemental agreement.* As part of the consideration for the issuance of a future interest oil and gas lease and as supplemental thereto, the applicant shall execute and file in triplicate an agreement for approval by the Director. Such agreement will provide for the payment of annual rental in advance at the rate of 25 cents an acre for each tract until the future interest therein becomes possessory or until production is had on the lands described in the lease. After discovery, and until the lease becomes effective as to the respective tracts, the agreement will provide for the payment of a royalty on production, not less than 25 cents per acre per annum, at the particular rate that is applicable; when the interval from the date of receipt of said lease application to the date that the future interest will become possessory is:

	Percent
Not more than 5 years	5
More than 5 years, but not more than 10 years	4
More than 10 years, but not more than 15 years	3
More than 15 years	1

Such agreement will be effective as of the date the lease issues. Such agreement will govern the relationship of the applicant and the United States between its effective date and the respective dates when the lease becomes effective as to each future interest, as set forth in the lease. Where the United States owns both a fractional interest and a fractional future interest in the minerals in the same tract, the supplemental agreement will cover only the fractional future interest in that tract. The lease when issued shall cover both the present and future interests in the land and shall be effective for the present interest held by the United States as of the date for which the lease issues. In such cases and also in all cases where the United States owns only part of the future mineral interest the percentage of royalty specified in the supplemental agreement shall apply to the fractional future interest in that proportion. In lieu of a provision in the agreement for the payment of royalty by the future interest lease holder, the applicant, if not the owner of the present mineral interest, may obtain and file with the Bureau of Land Management an instrument executed in duplicate by the present mineral owner conveying or assigning to the United States the royalty interest set forth in the agreement applicable to the particular terms of years which will elapse before the United States becomes the owner of the mineral rights. If found acceptable, one original of such assignment will be returned to the applicant for recordation at his expense and for return to the Bureau of Land Management. In such case, the supplemental agreement should have endorsed on it by the applicant the statement that the assignment of such royalty interest to the United States is recognized by the holder of the agreement.

(d) *Approval.* Leases for a whole or fractional interest will be issued on a form approved by the Director. Such leases will be sent to the applicant or offeror for execution and return to the proper land office for execution by the appropriate officer. Thereafter, an executed copy will be mailed to lessee.

This Circular replaces Circulars 2258, 2314, and that portion of Circular 2331 relating to Part 3120.

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portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as provided in paragraph (a) of this section for officially surveyed lands. If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease.

(e) *Conforming land descriptions.* The descriptions in leases issued pursuant to offers filed after the effective date of this section will be conformed to the subdivisions of the approved protracted surveys if and when such surveys have been adopted for the area; and the description and acreage of leases issued pursuant to offers filed after May 22, 1959, will be adjusted to the official public land surveys when such surveys have been extended over the leased area.

§ 3101.1–5 Acreage limitations.

(a) *Maximum holdings.* No person, association, or corporation shall take hold, own, or control at one time oil and gas leases (including options for such leases or interests therein) whether directly through ownership of leases or interests in leases and applications, or offers therefor or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding leases or interests therein and applications or offers therefor for more than 246,080 acres in any one State, of which no more than 200,000 acres may be held under option.

(1) *Exception.* (i) In the State of Alaska the acreage limitation is 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the two leasing districts.

(ii) The boundary between the two leasing districts in the State of Alaska is the left limit of the Tanana River from the boundary between the United States and Canada to the confluence of the Tanana River and Yukon River and the left limit of the Yukon River from said confluence to its principal southern mouth.

(b) *Excepted acreage.* Leases or offers or applications for leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases or offers or applications for leases subject to an operating, drilling or development contract approved by the Secretary of the Interior pursuant to section 17(j) of the act, other than communization agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(c) *Excess acreage.* (1) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contraction or elimination in which to reduce his holdings to the prescribed limitation and to file proof of such reduction in the proper land office.

(2) If any person holding or controlling only leases or interests in leases or options or interests in options is found to hold accountable acreage in violation of the provisions of this section and of the act, the last lease or leases or interest or interests acquired by him which with the options or interests in options created the excess acreage holdings shall be canceled or forfeited in their entirely, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director of the Bureau of Land Management that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be canceled only to the extent of the excess acreage.

(3) Any person holding or controlling leases or interests in leases only, or applications or offers for leases only, or both leases or interest in leases and applications or offers or options or interests in options below the acreage limitation provided in this section, shall be subject to these rules:

(i) If he files an application or offer or option or interest in option which causes him to exceed the acreage limitation, that application or offer will be rejected.

(ii) For tracts not subject to the simultaneous filing procedures of subpart 3112, if he files a group of applications or options or offers or interests in options at the same time, any one of which causes him to exceed the acreage limitations the entire group applications, offers, options, or interests in options will be rejected.

(iii) If he files an offer for inclusion in the drawing procedures under subpart 3112, he shall be charged with the acreage thereof only if his offer is successfully drawn so that his offer has first priority. If that offer causes him to exceed the acreage limitation, the offer will be rejected. If he files at the same time a group of offers for tracts subject to the drawing procedures under subpart 3112, any offer which is successfully drawn after he reaches the acreage limitation shall be rejected.

(iv) An optionee is chargeable only for that acreage for which the optionor is chargeable.

(4) If any person holding or controlling both leases or interests in leases and applications or offers for leases, or options or interests in options or only applications or offers for leases below the acreage limitation provided in this section, acquires a lease or leases, or an option or options or interests therein; which cause him to exceed the acreage limitation, his most recently filed application or offer for lease or applications or offers for lease then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this subparagraph, time of filing shall be determined by the time of filing marked on the application or offer or, if the same time is marked on two or more applications or offers, by the serial number of the applications or offers.

(5) The provisions of this paragraph shall not limit any action which the Department may take with respect to excess acreage holdings in cases not otherwise covered by this paragraph.

(6) An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

(d) *Computation.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation. An option held by a corporation or an association on September 2, 1960, shall not, for a period of 3 years, be charged to any stockholder of the corporation or member of the association so long as it is so held. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(e) *Showing required.* No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the offeror, transferee, or operator is entitled to hold the acreage or obtain the operating rights. At any time upon request by the authorized officer of the Bureau of Land Management, the record title holder of any lease or a lease operator or a lease offeror or the holder of any lease option may be required to file in the appropriate land office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, or for which he holds an option, and each application or offer for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any oil and gas lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

§ 3101.1–6 Effect of Multiple Mineral Development Act of August 13, 1954.

If any oil and gas lease issued under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. sec. 226), includes an area with respect to which a verified statement is filed by a mining claimant

under section 7(c) of the Multiple Mineral Development Act of 1954 (68 Stat. 708), as amended, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted the payment of rentals and the running of time under such lease shall be suspended as to the lands in conflict from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

§ 3101.2 Acquired lands.

§ 3101.2–1 Lands to which the Act does not apply.

(a) Acquired for the development of their mineral deposits,

(b) Acquired by foreclosure or otherwise for resale,

(c) Reported as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.),

(d) In incorporated cities, towns, and villages,

(e) In national parks and monuments,

(f) Set apart for military or naval purposes, including lands within naval petroleum and oil shale reserves, or

(g) Which are tide lands, submerged coastal lands, within the continental shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

§ 3101.2–2 Sale or conveyance of lands.

Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof, shall be subject to any lease or permit theretofore issued under the act.

§ 3101.2–3 Description of lands in offer.

(a) *Surveyed lands.* If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b) (1) *Lands not surveyed under the rectangular survey system.* If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(2) Each offer or application must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(3) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by subparagraph (2) of this paragraph.

(c) *Accreted lands.* Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

§ 3101.2–4 Acreage limitation.

The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings; such respective holdings shall not be interchargeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

§ 3101.2–5 Present interest.

(a) *Full and fractional.* Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3101.2–6 Future interest.

(a) *Full or fractional.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as operator holding such rights.

§ 3101.2–7 Exchange of leases.

Oil and gas leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act. New leases shall be issued for a term of 5 years and so long thereafter as oil or gas is produced in paying quantities, and shall be dated to be effective as of the first of the month after the filing of the application to exchange. The rental rates for the new lease, for lands not within the known geologic structure of a producing oil or gas field at the time of the filing of the application for exchange, shall be the same as those set forth in § 3103.3–2, and the royalty rate for such lands shall be 12½ percent. For all other lands, the rental rate for the new lease shall be $1 per acre per annum, and the royalty requirements shall be the same as those stipulated in the lease offered in exchange.

§ 3101.3 Withdrawn, reserved, and segregated lands.

§ 3101.3–1 Drainage.

In instances where it is determined by the Geological Survey that any of the lands mentioned in § 3101.3–3 of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the U.S. Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

§ 3101.3–2 Requirements.

(a) *Publication and filing of agreements.* The agreements referred to in § 3101.3–3 of this section shall be published in the FEDERAL REGISTER and shall contain a description of the lands affected thereby which are not subject to oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the appropriate land offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose.

(b) *Filing of lease offers.* Lease offers for such lands will not be accepted for filing until the 10th day after the agreements and supplemental maps or plats are noted on the land office records.

(c) *Suspension of pending applications.* (1) All pending offers or applications heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in § 3101.3–3(b)(1) of this section shall have been completed.

§ 3107.4 Extension for terms of cooperative or unit plan.

§ 3107.4–1 20-year lease or any renewal thereof.

Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

§ 3107.4–2 Other leases committed to plan.

Any other lease issued under any section of the act, committed to any such plan that contains a general provision for the allocation of oil or gas, shall continue in effect as to the land committed so long as the lease remains subject to the plan: *Provided,* That production of oil or gas is had in paying quantities under the plan prior to the expiration date of such lease, whether it be in its primary term or its extended term.

§ 3107.4–3 Segregation of leases committed in part.

Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committeed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.5 Extension by elimination.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for 2 years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.6 Extension of leases segregated by assignment.

§ 3107.6–1 Extension after discovery on other segregated portions.

Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

§ 3107.6–2 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities, provided the parent lease was issued prior to September 2, 1960.

§ 3107.6–3 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.7 Exchange leases.

§ 3107.7–1 20-year leases.

(a) *Requirements and terms.* Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 3103.3–2, 3103.3–4, and 3103.3–5. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate land office, must show full compliance by the applicant with the terms of the lease and applicable regulations, and must be accompanied by a nonrefundable filing fee of $10.

§ 3107.8 Renewal leases.

§ 3107.8–1 Requirements.

(a) Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 percent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

§ 3107.8–2 Terms.

Twenty-year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 3103.3–2, 3103.3–4 and 3103.3–5. An application to renew should be filed in triplicate, in the proper office as prescribed in § 3000.5 at least 90 days, but not more than 6 months, prior to the expiration of its term, and must be accompanied by a nonrefundable filing fee of $10.

§ 3107.8–3 Approval.

(a) *Acceptable application.* If the outstanding obligations in excess of 5 percent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the cost of operations, including the payment of overriding royalties or payments out of production, shall be determined by the authorized officer of the Bureau of Land Management to constitute such a burden such royalties and payments shall be reduced to not more than 5 percent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

(b) *Unacceptable application.* If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been affected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 3107.8–4 Form of lease.

Renewal and exchange leases will be issued on a form approved by the Director. The rentals and royalties payable thereunder will be set out on such schedule as may be appropriate.

§ 3107.9 Other types.

§ 3107.9–1 Payment of compensatory royalty.

The payment of compensatory royalty shall extend the primary or extended term of any lease for the period during which such compensatory royalty is paid, and for a period of 1 year from the discontinuance of such payments, and for so long thereafter as oil or gas is produced in paying quantities.

§ 3107.9–2 Proceedings under Multiple Mineral Development Act of August 13, 1954.

See § 3101.1–6.

Subpart 3108—Terminations and Expirations

§ 3108.1 Relinquishments.

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payments of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 3108.2 Operation of law.

§ 3108.2–1 Automatic terminations and reinstatement.

(a) *Automatic terminations.* Except as provided in paragraph (b) of this section, any lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the appropriate land office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in Subpart 3112.

(b) *Exceptions.* If the rental payment due under a lease is paid on or before its anniversary date but either the amount of the payment has been or is hereafter deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in the lease or stated in a bill or decision rendered by an authorized officer and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency will be considered nominal if it is not more than $10 or five per centum (5 percent) of the total payment due, whichever is more. The authorized officer will send a Notice of Deficiency to the lessee on a form approved by the Director. The notice will be sent by certified mail, return receipt requested, and will allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the appropriate office. If the payment called for in the notice is not paid within the time allowed, the lease will have terminated by operation of the law as of its anniversary date.

(c) *Reinstatement.* (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested. Notices of Termination will not be sent to lessees whose leases terminated prior to May 12, 1970. Lessees whose leases terminated prior to May 12, 1970, must file petitions for reinstatement with the appropriate office by close of business on December 31, 1971. Such petitions are subject to all other appropriate provisions of this section.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary.

(d) *Extension of terms of reinstated leases.* In any case where a reinstatement of a terminated lease is granted under this section and the authorized officer finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may, at his discretion, extend the term of such lease for such period as he believes will give the lessee such an opportunity. Such extensions shall be subject to the following conditions:

(1) No extension shall exceed a period equivalent to the time (i) beginning when the lessee knew or should have known of the termination and (ii) ending on the date on which the authorized officer grants such petition.

(2) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(3) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition.

(e) *Service of documents.* The rules governing filing and service of documents set out in § 1840.0–6(e) of this chapter shall apply to notices of deficiency and termination issued under the provisions of this section .

§ 3108.2–2 Expiration.

§ 3108.2–3 Noncompliance with leasing act or lease terms.

Whenever the lessee fails otherwise to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, such lease may be canceled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to lessee in accordance with section 31 of the act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may, at any time prior to the anniversary date of such lease and the accrual of rental, elect to subject his lease to the automatic termination provisions of this section by notifying, in writing, the manager of the appropriate land office to that effect.

§ 3108.3 Judicial proceedings.

Leases known to contain valuable deposits of oil or gas may be cancelled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

Subpart 3109—Surface Management Requirements

§ 3109.1 General.

§ 3109.1–1 Surface, natural resources, and improvements.

§ 3109.1–2 Antiquities and objects of historical value.

§ 3109.2 Public domain.

§ 3109.2–1 Bureau of Land Management stipulations.

The Bureau of Land Management may require such special stipulations as are

to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) *Right of dismissal.* Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(d) *Suspension.* If during any such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3102.2 Individuals.

§ 3102.2–1 Statement of citizenship.

A statement over the offeror's signature setting forth his citizenship shall accompany each offer when first filed.

§ 3102.2–2 Preference right of patentee or entryman.

(a) *Requirements.* An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

(b) *Notice required.* Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

§ 3102.3 Associations including partnerships.

§ 3102.3–1 Statements.

If the offeror is an association which meets the requirements of § 3102.1–1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (i) that it is authorized to hold oil and gas leases; (ii) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (iii) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth be furnished. Where such material has his citizenship and holdings, shall also previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

(a) *Exception.* If the offer is made by an association which does not meet the requirements of § 3102.1–1 of this chapter, the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

§ 3102.4 Corporations.

§ 3102.4–1 Statements.

If the offeror is a corporation, the offer must be accompanied by a statement showing (1) the State in which it is incorporated, (2) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, (3) the percentage of voting stock and of all the stock owned by aliens or those having addresses outside of the United States, and (4) the names and addresses of the stockholders holding more than 10 percent of the stock of the corporation. Where the stock owned by aliens is over 10 percent, additional information may be required by the Bureau before the lease is issued or production is obtained. A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth his citizenship and holdings must also be furnished. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

§ 3102.5 Guardian or trustee.

§ 3102.5-1 Statements.

If the offer is made by a guardian or trustee, a certified copy of the court order authorizing him to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; his statements as to the citizenship and holdings of each of the minors, and a similar statement as to his own citizenship and holdings under the leasing act, including his holdings for the benefit of other minors.

§ 3102.5–2 Evidence previously filed.

Where evidence of the authority to act as a guardian, trustee, an executor or administrator, or where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3102.6 Attorney-in-fact.

§ 3102.6–1 Statements.

(a) *Evidence required.* (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3–1), or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see § 3102.4–1), evidence of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same land office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1–5. The statement by the principal (offeror) may be filed within

15 days after the filing of the offer. This requirement does not apply in cases in which the attorney-in-fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(3) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations.

§ 3102.7 Showing as to sole party in interest.

A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled.

§ 3102.8 Heirs and devisees (estates).

If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(a) Where probate of the estate has not been completed:

(1) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(2) A statement over the signature of each heir or devisee, similar to that required of an offeror under § 3102.1 and 3102.2–1 concerning citizenship and holdings.

(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under § 3102.1 and § 3102.2–1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3102.9 Municipalities.

A municipality must submit evidence of: (a) The manner in which it is organized; (b) that it is authorized to hold a permit or lease; and (c) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

Subpart 3103—Fees, Rentals and Royalty

§ 3103.0–3 Authorities.

(a) *Fees.* Act of August 31, 1951 (5 U.S.C. 140).

(b) *Rentals.* See § 3100.0–3.

§ 3103.1 Payments.

§ 3103.1–1 Form of remittance.

Cash, money order, check, certified check, bank draft, and bank cashier's check.

§ 3103.1–2 Where submitted.

(a) *Proper land office.* Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the Manager of the appropriate land office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) *Geological Survey.* (1) All rentals and royalties on producing oil and gas leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable, and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Regional Oil and Gas Supervisor of the U.S. Geological Survey.

(2) Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the U.S. Geological Survey.

§ 3103.1–3 When submitted.

Each offer, when first filed, shall be accompanied by a filing fee of $10 which will be retained as a service charge, even though the offer should be rejected or withdrawn in whole or in part. See also §§ 3103.3–1 and 3103.3–2.

§ 3103.2 Fees.

§ 3103.2–1 General statement.

(a) *Offers and applications.* Offers for noncompetitive oil and gas leases must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

(b) *Transfers.* An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3106.4 must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

§ 3103.3 Rentals and royalties.

§ 3103.3–1 Rental requirement.

Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

§ 3103.3–2 Advance rental payments.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after September 2, 1960, under section 17 of the act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of 50 cents per acre or fraction thereof for each lease year.

(1) For the sixth and each succeeding year of a lease which issued prior to September 2, 1960, and in the State of Alaska of any lease whose initial term expired on or after July 3, 1958, rental shall be payable at the rate of 50 cents per acre or fraction thereof.

(2) For each year of the primary term of a lease which issued prior to September 2, 1960, rental shall be payable at the rate set forth in the lease.

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed

to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of $2 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section shall apply to the acreage not within a participating area.

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of $2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is unitized, such rental shall be payable on the nonparticipating acreage only, and royalty as provided in the lease and elsewhere in this Part shall be payable on the participating acreage.

(c) On leases issued in any other way, an annual rental of $1 per acre or fraction thereof.

(d) A lease subject to the provisions of section 31 of the act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The "anniversary date" of a lease means the same day and month in succeeding years as that on which the lease first became effective. The anniversary date of a lease does not change.

(e) If on the anniversary date of the lease less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year. (30 U.S.C. 189; 41 Stat. 437.) If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

§ 3103.3–3 Fractional interests.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in §§ 3103.3, 3103.3–4, and 3103.3–5, respectively, of this part, as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3103.3–4 Royalty on production.

(a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska which issued and was outstanding prior to May 3, 1958, who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.
Over 110 but not over 130 the royalty shall be 18% of all production.
Over 130 but not over 150 the royalty shall be 19% of all production.
Over 150 but not over 200 the royalty shall be 20% of all production.
Over 200 but not over 250 the royalty shall be 21% of all production.
Over 250 but not over 300 the royalty shall be 22% of all production.
Over 300 but not over 350 the royalty shall be 23% of all production.
Over 350 but not over 400 the royalty shall be 24% of all production.
Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

§ 3103.3–5 Minimum royalties.

On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a

minimum royalty of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year.

§ 3103.3–6 Limitation of overriding royalties.

An agreement creating overriding royalties or payments out of the production of oil which, when added to overriding royalties or payments out of production of oil previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production of oil shall be suspended when the average production of oil per well per day averaged on the monthly basis is 15 barrels or less. The limitation on overriding royalties or payments out of production is not applicable to the production of gas. The limitation in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

§ 3103.3–7 Waiver, suspension or reduction of rental or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the Oil and Gas Supervisor for oil and gas leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3103.3–8 Suspension of operations and production.

(a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the Regional Oil and Gas Supervisor for oil and gas leases, and in the office of the Regional Mining Supervisor for all other leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the Regional Oil and Gas Supervisors and the Regional Mining Supervisors are authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted. As to oil and gas leases, no suspension of operations and production will be granted on any lease in the absence of a well capable of production on the leasehold, except where the Secretary directs a suspension in the interest of conservation. Complete information must be furnished showing the necessity of such relief.

(b) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(d) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(e) If there is a well capable of producing on the leased premises and all operations and production are suspended pursuant to any direction or assent of the Secretary, the commencement of drilling operations only will be regarded as terminating the suspension as to operations but not as to production, and as terminating the period of suspension to be added to the term of the lease as provided in paragraph (b) of this section and the period of suspension of rental and minimum royalty payments as provided in paragraph (c) of this section. However, as provided in paragraph (d) of this section, the term of the lease will not be deemed to expire so long as the suspension of operations or production remains in effect.

(f) The relief authorized under this section may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

Subpart 3104—Bonds

§ 3104.0–5 Definitions.

(a) General lease bond.

§ 3104.1 Types of bonds.

Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties may be furnished for the protection of the entryman or owner of surface rights.

(a) *General lease or drilling bond.* All leases shall provide that where a $10,000 bond is not already being maintained a general lease bond in the penal sum of $10,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations.

(b) *Known structure or competitive lease bond.* The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $2 per acre annual rental but in no case less than $1,000 nor more than $10,000 conditioned on compliance with all the terms of the lease, and such a bond also must be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field.

(c) *Bond for protection of surface owner.* Until a general lease bond is filed, a noncompetitive lessee will be required prior to entry on the leased lands to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights.

§ 3104.1–1 Where filed and copies.

(a) Proper land office, in single copy.

§ 3104.1–2 When filed.

(a) Prior to commencement of drilling operations.

(b) After notice that lands have been included within the limits of a known geologic structure.

(c) Prior to entry on surface of patented lands.

(d) Prior to issuance of a competitive lease.

§ 3104.1–3 Form of bonds.

The bonds furnished will be on forms approved by the Director.

§ 3104.2 Operator's bond.

§ 3104.2–1 Compliance.

An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $10,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold.

§ 3104.2–2 Approval.

An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

§ 3104.2–3 Default.

Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond.

§ 3104.3 Individual sureties.

§ 3104.3–1 Protection.

(a) Entry to leased lands.

(b) Bonds with individual sureties may be furnished for the protection of the entrymen or owner of surface rights.

§ 3104.3–2 Net worth statement.

Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the U.S. Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located.

§ 3104.3–3 Certificate required.

There also must be furnished a certificate by a judge or clerk of a court of record, a U.S. Attorney, a U.S. Commissioner, or a U.S. Postmaster, as to the identity, signature, and financial competency of the sureties.

§ 3104.3–4 Requirements.

All bonds furnished with individual sureties will be examined every 2 years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required.

§ 3104.3–5 Terms.

Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations.

§ 3104.3–6 Forms.

The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

§ 3104.4 Personal bond or corporate bond.

§ 3104.4–1 Amount.

(a) *Personal bond.* In lieu of a surety bond, a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond.

(b) *Corporate bond.*

§ 3104.4–2 Deposit of securities.

Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

§ 3104.4–3 Qualified sureties.

(U.S. Treasury list.)

§ 3104.5 Nationwide bond.

§ 3104.5–1 Amount.

The holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be $150,000 for full nationwide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 913; 30 U.S.C. 351–369).

§ 3104.6 Statewide bond.

§ 3104.6–1 Amount.

The holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be at the rate of $25,000 for each unit of coverage.

§ 3104.6–2 Unit of coverage.

A unit of coverage shall be all the lands in any one State held by the principal under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State constitutes two units.

§ 3104.7 Default.

§ 3104.7–1 Payment by surety.

Where upon a default the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3104.7–2 Penalty.

Thereafter, upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $150,000 or a unit bond, as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix.

§ 3104.7–3 Relief.

However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3104.7–4 Applicability of provisions to existing bonds.

The provisions hereof may be made applicable to any nationwide or statewide bond in force at the time of the approval of the amendment of this paragraph by filing in the appropriate land office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ 3104.8 Unit bond form.

(See 30 CFR § 226.15.)

§ 3104.9 Exploration bond.

(a) *Individual.* Simultaneously with the filing of the Notice of Intent to Conduct Oil and Gas Exploration Operations, and before entry is made on the land, the party or parties filing the "Notice of Intent to Conduct Oil and Gas Exploration Operations" must file with the District Manager a surety company bond in the amount of $5,000, conditioned upon the full and faithful compliance, for each oil and gas exploration operation, with all of the terms and conditions of the regulations in this subpart and of that notice.

(b) *Nationwide.* A $50,000 nationwide bond.

(c) *Statewide.* A statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State.

§ 3104.9–1 Riders to existing bond forms.

(a) *Nationwide and statewide bonds.* Holders of nationwide and statewide oil and gas lease bonds shall be permitted to amend their bonds to include exploration activities in lieu of furnishing additional bonds.

§ 3104.9–5 Termination of period of liability.

The District Manager will not give his consent to the cancellation of the bond if an individual bond was submitted, or to the termination of liability if a State or nationwide bond was submitted, unless and until all of the terms and conditions of the "Notice of Intent to Conduct Oil and Gas Exploration Operations" have been complied with. Should the District Manager or any other authorized officer of the Bureau of Land Management fail to notify the party within 90 days from the filing of "Notice of Completion" that all terms and conditions have been complied with or that additional corrective measures must be taken to rehabilitate the land, liability under an individual bond or liability for a particular oil and gas exploration operation under a state or nationwide bond shall automatically terminate on the 91st day.

Subpart 3105—Cooperative Conservation Provisions

§ 3105.0–7 Cross-references.

The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226 "Unit or Cooperative Agreements".

§ 3105.1 Cooperative or unit plans.

§ 3105.1–1 Where filed.

All applications to unitize and all documents incident thereto shall be filed in the office of the Oil and Gas Supervisor, Geological Survey in the region in which the unit area is situated.

§ 3105.1–2 Purpose.

The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest.

§ 3105.1–3 Protection of public interest.

The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest.

§ 3105.1–4 Acreage chargeability.

All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges. For the extension of leases committed to a unit plan, see section 3107.4.

§ 3105.1–5 Requirements.

The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation).

§ 3105.2 Communitization or drilling agreements.

§ 3105.2–1 Where filed.

(a) *Preliminary request.* Preliminary requests to communitize separate tracts shall be filed in triplicate with the Oil and Gas Supervisor.

(b) *Executed agreements.* Executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

§ 3105.2–2 Purpose.

The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

§ 3105.2–3 Requirements.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

§ 3105.3 Operating, drilling, or development contracts.

§ 3105.3–1 Where filed.

A contract submittted for approval under this provision should be filed with the appropriate Land Office Manager, Bureau of Land Management, together with enough copies to permit retention of five copies by the Department after approval.

§ 3105.3–2 Purpose.

The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

§ 3105.3–3 Requirements.

The contract should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

§ 3105.4 Combination for joint operations or for transportation of oil.

§ 3105.4–1 Where filed.

An application under this section together with enough copies to permit retention of five copies by the Department after approval should be filed with the Director, Bureau of Land Management.

§ 3105.4–2 Purpose.

Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases.

§ 3105.4–3 Requirements.

The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.

§ 3105.4–4 Rights-of-way.

Rights-of-way for oil and gas pipe lines may be granted as provided for in Group 2800 of this chapter.

§ 3105.5 Subsurface storage of oil and gas.

§ 3105.5–1 Where filed.

(a) *Application.* Applications for subsurface storage shall be filed in triplicate with the Oil and Gas Supervisor.

(b) *Final agreement.* Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of five copies by the Department after approval.

§ 3105.5–2 Purpose.

In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced.

§ 3105.5–3 Requirements.

The final agreement shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project.

§ 3105.5–4 Extension of lease term.

Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved if it is determined that there is sufficient justification. Each application will be considered on its own merits. Ordinarily, leases to different lessees for different terms, rental, and royalty rates as well as those containing provisions of law which cannot be reconciled, will not be considered for consolidation. The effective date of the consolidated lease will be that of the oldest lease involved.

Subpart 3106—Assignment or Transfers and Subleases

§ 3106.1 Qualifications.

§ 3106.1–1 Who may file.

Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease.

(a) *Minors*—(1) *Exception.* A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved.

§ 3106.1–2 Failure to qualify.

No assignment will be approved if the assignee or sublessee or any other parties in interest are not qualified to take and hold a lease or if their bond is insufficient or if they fail to file the statement of interest required by section 3106.1–4.

§ 3106.1–3 Number of copies required.

A single copy of any additional information relating to citizenship and qualifications of corporations will be sufficient. Except for assignments of royalty interests all instruments of transfer of a lease or of an interest therein, including assignments of working interests, operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and, except for record title assignments, must contain all of the terms and conditions agreed upon by the parties thereto, together with similar evidence and statements as that required of an offeror under subpart 3102.

§ 3106.1–4 Sole party in interest.

The assignment or sublease must be accompanied by a signed statement by the assignee or sublessee that he is the sole party in interest in the assignment or sublease; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the assignment or sublease, a separate statement must be signed by them and by the assignee or sublessee setting forth the nature and extent of the interest of each, the nature of the agreement between them, if oral, and a copy of the agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the assignment or sublease.

§ 3106.1–5 Attorney-in-fact.

Where an attorney-in-fact or agent, in behalf of the assignor or assignee, signs the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished. Where such evidence has previously been filed in the same land office where the assignment is filed, a reference to the serial number of the record in which it has been filed will be accepted. In those cases where the application for approval of an assignment is signed by an attorney-in-fact or agent there must also be submitted similar statements and evidence from the principal and the agent or attorney-in-fact to that required by § 3102.6.

§ 3106.1–6 Heirs and devisees.

In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 3102.8.

§ 3106.2 Requirements.

§ 3106.2–1 Where filed and filing fee.

An application for approval of any instrument of transfer of a lease of interest therein or a filing of any such instrument under § 3106.4 must be filed in the proper land office and accompanied by a fee of $10. An application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

§ 3106.2–2 Forms and statements.

(a) *Record title; copies required.* Assignments of record title interests must be filed in triplicate.

(1) *Approved form.* A form approved by the Director, or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of the official form and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. The official form, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office in behalf of the United States.

(2) *Separate instruments required.* A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

(b) *Other than record title; copies required.* A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

§ 3106.2–3 Bonds.

(a) *Coverage.* If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nationwide or statewide bond, no additional showing is necessary by such party as to the bond requirement.

(b) *Continuing responsibility.* The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

§ 3106.2–4 Royalty and production payments.

(a) *Royalty.* If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them.

(b) *Production payments.* If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. A single copy of any additional information relating to citizenship and qualifications of corporations, will be sufficient.

Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be canceled as provided in subpart 3108.

§ 3106.2–6 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the lease or in the manner required by § 3101.1–4.

(a) *Effect of assignment.* An assignment of a definitely described portion of the lands in a lease segregates the assigned and the retained portions into separate and distinct leases. An assignment of an undivided interest either in the entire leasehold or in any definitely described portion thereof shall not segregate or have the effect of segregating the lease into separate or distinct leases.

§ 3106.3 Approval.

§ 3106.3–1 Approval.

To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties.

§ 3106.3–2 Separate zones.

An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convicing evidence.

§ 3106.3–3 Effective date.

Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by this subpart.

§ 3106.3–4 Transfer of offer.

A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

§ 3106.4 Royalty interests.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the act. In order that the holdings of the assignee may be verified, all assignments of royalty interests should be filed for record purposes within 90 days from the date of execution, but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 3101.1–5 and by the statement as to overriding royalties required by § 3103.3–6. If any portion of this statement is found to be false the assignment shall be invalid.

§ 3106.5 Extensions.

See § 3107.6.

Subpart 3107—Continuation, Extension or Renewals

§ 3107.1 Single extensions.

§ 3107.1–1 Requirements.

(a) *Who may apply.* Under the conditions set out in the following paragraphs of this section, the record title holder of any noncompetitive lease maintained in accordance with the statutory requirements and the regulations in this part which issued prior to September 2, 1960, shall be entitled, to a single extension of the lease at the expiration of the initial five-year term unless then otherwise provided by law. An application for such extension may be filed by the record title holder of the lease, by an assignee whose assignment has been filed for approval, or by an operator whose operating agreement has been filed for approval.

(b) *Application.* The application for extension must be filed, within ninety days before the expiration date of the lease, on a form approved by the Director. "Application for Extension of Oil and Gas Lease", or unofficial copies of that form in current use and must be accompanied by a filing fee of $10 which will be retained as a service charge even though the application is later withdrawn or rejected and, unless previously paid, the sixth year's rental: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes or advertising. The official form or a valid reproduction of the official form, will also constitute approval of the extension when signed by an authorized officer.

§ 3107.1–2 Effect of withdrawal of lands.

Where, upon the expiration of the initial 5-year lease term, the leased lands or any part thereof, have been withdrawn from leasing, the lease will not be extended as to such lands, except that, a withdrawal shall not affect the right to an extension if drilling operations were actually commenced on the withdrawn lands prior to the effective date of the withdrawal and such operations were being diligently prosecuted on the expiration date of the lease, or if notice of the withdrawal has not been sent by registered mail to each lessee to be affected thereby, at least 90 days prior to the termination date of the lease.

§ 3107.1–3 Term of extension.

Upon compliance with, and in accordance with, the provisions of this section, the lease will be extended, subject to the rules and regulations in force at the expiration of the initial term, (1) as to the lands not within the known geologic structure of a producing oil or gas field, for a period of 5 years, and so long thereafter as oil or gas is produced in paying quantities, and (2) as to lands within the known geologic structure of a producing oil or gas field, for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.1–4 Segregative effect of application.

The timely filing of an application for extension shall have the effect of segregating the leased lands until the final action taken on the application is noted on the tract book, or, for acquired lands, on the official records relating thereto, of the appropriate land office. Prior to such notation, the lands are not available to the filing of offers to lease. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

§ 3107.1–5 Rejection.

If during the 90-day period prior to the expiration date of the lease, the record title holder, assignee or operator files an application or request for an extension not on the prescribed form or unofficial copies thereof, or fails to file the prescribed number of copies, or pay the sixth year's rental, a notice will be issued allowing him 30 days to do so. The application will be rejected if such filing or payment is not made within the time allowed.

§ 3107.1–6 Expiration by operation of law.

Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands covered by such expired lease will be subject to the filing of new lease offers only as provided in subpart 3112.

§ 3107.2 Continuation by drilling.

§ 3107.2–1 Terms defined.

(a) *Actual drilling operations.* As used in this section "actual drilling operations" shall include not only the physical drilling of a well but the testing, completing or equipping of such well for the production of oil or gas.

(b) *Primary term.* "Primary term" means all periods in the life of the lease prior to its extension by reason of production of oil or gas in paying quantities.

§ 3107.2–2 Diligent operations.

Actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts.

§ 3107.2–3 Period of extension.

Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.3 Continuation of lease on termination of production.

§ 3107.3–1 Cessation of production.

A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

§ 3107.3–2 Nonproduction from lease capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Regional Oil and Gas Supervisor to do so: *Provided,* That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the act.

(2) *Proposed withdrawals.* All existing offers or applications for oil and gas leases covering lands included in request for withdrawals for wildlife refuges, game ranges, coordination lands or Alaska wildlife areas, as defined herein, shall be suspended until after the consummation of the withdrawal, and thereafter such offers shall be considered in accordance with the provisions of this section.

(d) *Special stipulations.* For inclusion in oil and gas leases entered into pursuant to this section relating to oil and gas leases in wildlife refuge, game range, and coordination lands.

Instructions. (1) The following stipulations will be made a part of Interior Department lease forms. These stipulations will be made applicable as terms and conditions of performance by lessees under all oil and gas leases entered into under authority vested in the Secretary of the Interior over game range, coordination or Alaska Wildlife lands pursuant to the order of the Secretary of the Interior published in 23 F.R. 227, January 11, 1958.

(2) Should compliance with one or more of these terms and conditions be considered unduly burdensome and unnecessary to the protection of wildlife resources, the lessee may request waiver thereof by letter addressed to the Secretary of the Interior setting forth, in full, the reasons why a waiver is considered necessary. The authority to grant such waivers shall be discretionary and may be exercised only by the Secretary or the Under Secretary of the Interior.

(3) The authorized officer shall (a) approve no plan of operation that contains provisions inconsistent with the stipulations hereinafter set forth; (b) waive no term or condition in a lease; or (c) exercise no discretion vested in him unless he is satisfied the exercise of that discretion will not damage any wildlife resource.

(4) Drilling and production operations under the lease shall be under the direction of the Geological Survey.

Terms and conditions. (1) as used herein:

(a) The term "lessee" includes the lessee, heirs and assigns of the lessee and persons operating on behalf of the lessee;

(b) The term "wildlife resources" includes fish and wildlife resources and concentrations, fish and wildlife management operations and range improvements and facilities;

(c) The term "authorized officer" means the State Director of the Bureau of Land Management in the State in which the land is located, and, in Alaska, the Refuge Manager of the Bureau of Sport Fisheries and Wildlife;

(2) The lessee shall:

(a) Comply with all the rules and regulations of the Secretary of the Interior;

(b) Prior to the beginning of operations, appoint and maintain at all times during the term of the lease a local agent upon whom may be served written orders or notices respecting matters contained in these stipulations and to inform the authorized officer in writing of the name and address of such agent. If a substitute agent is appointed, the lessee shall immediately inform the said representative;

(c) Conduct all authorized activities in a manner satisfactory to the authorized officer with due regard for good land management and avoid damage to improvements, timber, crops, and wildlife cover, and fill all sump holes, ditches, and other excavations or cover all debris, and so far as reasonably possible, restore the surface of the leased lands to their former condition and when required to bury all pipelines below plow depth. The authorized officer shall have the right to enter all the premises at any time to inspect both the installation and operational activities of the lessee;

(d) Take such steps as may be necessary to prevent damage to wildlife;

(e) Do all in his power to prevent and suppress forest, brush, or grass fires and to require his employees, contractors, subcontractors and employees of contractors or subcontractors to do likewise;

(f) Install adequate blow-out prevention equipment;

(g) Construct ring dikes and sump pits to confine drilling mud and other pollutants and make safe disposition of salt water by use of injection wells or such other method as may be approved in the plan of operation;

(h) Cover flare pits in areas of wildlife concentration;

(i) Remove derricks, dikes, equipment, and structures not required in producing operations within 60 days after the completion of drilling;

(j) Comply with and see to it that his agents and employees comply with all Federal, State, or Territorial laws relating to hunting, fishing, and trapping;

(k) Commit the lease to any unit plan required in the interest of conservation of oil or gas resources or for the protection of wildlife;

(l) Prior to the conduct of geological, geophysical, or core drilling operations or construction of any facilities, or prior to operations to drill or produce, submit in triplicate for approval in writing by the authorized officer a plan of operation that will include detailed statements indicating the manner in which the lessee will comply with these stipulations together with a statement that the lessee agrees that compliance with these stipulations and with the approved plan of operations are conditions of performance under this lease and that failure to comply with these provisions (unless they are waived by the Secretary or the Under Secretary of the Interior) will be grounds for cancellation of the lease by the United States. Notwithstanding other provisions in these stipulations, the lessee shall include in any plan of operation specific provisions relating to: The time, place, depth and strength of seismographic shots, maps showing the location of his leases included in the plan, actual and proposed access roads, bunkhouses, proposed well locations, storage and utility facilities, water storage, pipelines and pumping stations; the type of safety equipment that will be employed; the methods to be used to assure the disposition of drilling mud, pollutants, and other debris; the location of facilities in relation to flood levels; and such other specific matters as the authorized officer may require. The plan of operation shall be kept current in all respects and all revisions and amendments submitted to the authorized officer for written approval;

(m) Do all things reasonably necessary to prevent or reduce to the fullest extent scarring and erosion of the land, pollution of the water resources and any damage to the watershed. Where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resource, the lessee agrees to repair such damage, including reseeding and to take such corrective measures to prevent further pollution or damage to the watershed as are deemed necessary by the authorized officer;

(n) File the bond required by section 2a (4) of the lease before conducting any operations on the leasehold, and file any additional bond required by the authorized officer to pay for damages to wildlife habitat, including trees and shrubs, or wildlife improvements;

(o) Agree to respect and comply with any new requirements imposed by the Secretary of the Interior, or the authorized officer, on the operating program as operating experience proves necessary in order to give complete protection to wildlife populations and wildlife habitat on the areas leased.

(3) The lessee shall not:

(a) Construct roads, pipelines, utility lines, and attendant facilities that are either unnecessary or which might interfere with wildlife habitat or resources or with drainage;

(b) Modify or change the character of streams, lakes, ponds, water holes, seeps, and marshes, except by advance approval in writing by the authorized officer, nor shall he in any way pollute such streams, lakes, ponds, water holes, seeps, or marshes;

(c) Conduct operations at such times as will interfere with wildlife concentrations;

(d) Conduct geological or geophysical explorations that might damage any wildlife resource and such operations shall be conducted only in accordance with advance approval in writing by the authorized officer as to the time, manner of travel and disturbances of surfaces and the facilities required for the protection of wildlife;

(e) Use explosives in fish spawning or rearing areas, nesting areas, lambing grounds, or other areas of wildlife concentration during periods of intense activity or at any other time or in any manner that might damage any wildlife resources; the pattern, size, and depth of seismographic shots shall be submitted to the authorized officer for advance approval in writing and immediately following the detonation of any seismographic charge, the hole shall be filled or plugged and any surface damage repaired to the satisfaction of the authorized officer;

(f) Without advance approval in writing, use any water or water source controlled or developed by the United States;

(g) Use mobile equipment under such conditions as to permanently damage surface resources, cause scarring and erosion, or interfere with wildlife concentration;

(h) Conduct geological, or geophysical, or core drilling operations or construct roads, bunkhouses or any facilities or drill or produce under a lease until the submittal and approval in writing of a plan of operation pursuant to section (2) (m) supra or deviate therefrom until any revisions or amendments of said plan have been approved in writing by the authorized officer;

(i) Burn rubbish, trash, or other inflammable materials or use explosives in a manner or at a time that would constitute a fire hazard.

§ 3101.3–3 Reserved and segregated lands.

(a) *Wildlife refuge lands.* Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(1) *Leasing.* No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3–1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order

to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director.

(b) *Game range lands and Alaska wildlife areas.* Game ranges created by a withdrawal of public lands and reserved for dual purposes, namely, protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources, are under the joint jurisdiction of the Bureau of Land Management and the U.S. Fish and Wildlife Service. Alaska wildlife areas are areas in Alaska created by a withdrawal of public lands for the management of natural wildlife resources and administered by the U.S. Fish and Wildlife Service.

(1) *Leasing.* As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the U.S. Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the U.S. Fish and Wildlife Service and the Bureau of Land Management.

(c) *Coordination lands.* These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the U.S. Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10, 1934 (48 Stat. 401), as amended by the act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the U.S. Fish and Wildlife Service as the custodial agency of the Government.

(1) *Leasing.* As to coordination lands, representatives of the Bureau of Land Management and the U.S. Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the U.S. Fish and Wildlife Service, and the Bureau of Land Management.

§ 3101.4 Special leasing acts (areas).

§ 3101.4–1 Rights-of-way.

Lands in and under railroad and other rights-of-way acquired under any law of the United States.

(a) *Acreage limitations.* No statutory or regulatory limitations.

§ 3101.4–2 Nevada.

All of Township 15 South, Ranges 66, 67, 68, East, M. D. M.

All of Township 16 South, Ranges 66, 67, 68, East, M. D. M.

All of Township 17 South, Ranges 66, 67, 68, East, M. D. M.

and also a tract described as follows:

That area of unsurveyed land east of Timber Mountain bounded on the north by latitude 37°10′20″, on the south by latitude 37°7′46″, and lying between meridians of longitude 116°20′16″ and 116°23′28″ comprising an area of 9 square miles and including what is known as Fortymile Canyon Pueblo.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–3 Lands patented to the State of California.

The regulations in this subpart apply to the lands patented to the State of California for park purposes.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–4 National Forest lands in Minnesota.

Public domain lands, including lands received in exchange for public domain lands, or for timber on such lands pursuant to Part 2240 of this chapter, situated within the exterior boundaries of the national forests in Minnesota, which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws of the United States or to mineral leasing laws, and for the development and utilization of which no other authority exists.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–5 Lake Mead Recreation Area.

The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA–LM–7060–B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–6 National Forest Wilderness.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest land designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

(a) *Acreage limitations.* See § 3101.1–5.

§ 3101.4–7 Whiskeytown-Shasta-Trinity National Recreation Area.

The area subject to the regulations in this subpart is that shown in drawing numbered BOR–WEST 1004, dated July 1963, entitled "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," which is on file and available for public inspection in the office of the Director of the Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C. 20240.

(a) *Acreage limitations.* See §§ 3101.1–5 and 3101.2–4.

Subpart 3102—Qualifications of Lessees

§ 3102.1 General.

A statement over the offeror's signature setting forth whether the offeror's direct and indirect interests in oil and gas leases, applications, and offers therefor and options exceed 246,080 acres in the same State of which no more than 200,000 acres are under option, or exceed 300,000 acres in each of the northern and southern leasing districts of Alaska, of which no more than 200,000 acres are held under option in each of said leasing districts is required.

§ 3102.1–1 Who may hold interests.

Mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interests by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; or (d) municipalities. As used in this group, "association" includes "partnership."

(a) *Aliens.* Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

(b) *Minors.* A mineral lease will not be issued to a minor, but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf.

§ 3102.1–2 Bona fide purchasers.

(a) *Provisions of statute.* The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Public Law 86–705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) *Sale of underlying interests.* If in any proceeding to cancel or forfeit a lease, interest in a lease, option

necessary for the protection of the lands embraced in any permit or lease.

(See Montana Power Decision A 30310 December 3, 1965, I.M. No. 65-560 December 23, 1965)

§ 3109.3 Acquired lands.

§ 3109.3-1 Consent of agency.

Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered.

§ 3109.4 Reserved, withdrawn, or segregated lands.

§ 3109.4-1 Requirements.

With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

§ 3109.4-2 Special stipulations.

Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

§ 3109.5 Special acts.

§ 3109.5-1 Requirements.

§ 3109.5-2 Special stipulations.

(a) Rights-of-way.

(b) Nevada.

(c) Lands patented to the State of California.

(d) National forest lands in Minnesota. Leases or permits under the act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

(e) Lake Mead recreation area.

(f) National Forest Wilderness. (1) All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(2) All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

(g) Whiskeytown-Shasta-Trinity national recreation area. Any lease or permit respecting minerals in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe.

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

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3110.1-2 Dating of leases.
3110.1-3 Acreage limitation.
3110.1-4 Withdrawal of offer.
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Subpart 3110—Noncompetitive Leases

§ 3110.1-1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities.

(a) *Special acts*—(1) *Rights-of-way.* The term of the lease will be for a period of not more than 20 years and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

§ 3110.1-2 Dating of leases.

All noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

§ 3110.1-3 Acreage limitation.

(a) *Public domain.* An offer may be made by a legal guardian or trustee in his name for the benefit of a nonalien minor or minors but an offer may not be filed by a minor. An offer may not include more than 2,560 acres except where the rule of approximation applies. The lands in the offer must be entirely within an area of 6 miles square or within an area not exceeding six surveyed sections in length or width. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan which has been approved as to form by the Director of the Geological Survey, or where the land is surrounded by lands not available for leasing under the act.

(b) *Acquired lands.* An offer may not include more than 2,560 acres except where the rule of approximation applies. That portion of § 3110.1-3(a) providing that an offer may not be made for less than 640 acres is not applicable to acquired lands lease offers.

§ 3110.1-4 Withwdrawal of offer.

(a) *Regular filings.* An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(b) *Simultaneous filings.* An applicant may withdraw his simultaneous offer drawing card prior to the drawing.

§ 3110.1-5 Amendment to lease.

If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the land office receives a withdrawal of the offer with respect to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on the required form describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as

the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 3110.1–2.

§ 3110.1–6 Determination of priorities.

(a) *Regular filing.* No lease shall be issued before final action has been taken on (*a*) any prior offer to lease the land, (*b*) any subsequent offer to lease the land that is based upon an alleged preferential right and (*c*) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offeror or petitioner is found to be qualified and entitled to receive a lease on the land. Offers to lease which cover lands subject to regular filings and which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously and priority to the extent of the conflicts between them will be determined by a public drawing.

(b) *Simultaneous filings.* If more than one offer to lease all or any part of the acreage covered by an expired, canceled, relinquished, or terminated lease is filed during the period provided for in subpart 3112, their priorities will be determined by a public drawing.

§ 3110.1–7 Land description.

(a) *Variation in land description.* If there is any variation in the land descriptions among the five copies of the official forms, the copy showing the date and time of receipt in the land office will control.

§ 3110.1–8 Rejections.

If, after the filing of an offer for a noncompetitive lease and before the issuance of a lease pursuant to that offer, the land embraced in the offer becomes within a known geological structure of a producing oil or gas field, the offer will be rejected and will afford the offeror no priority.

Subpart 3111—Regular Offers

§ 3111.1 Requirements.

§ 3111.1–1 Public domain.

(a) Application—(1) *Forms.* Except as provided in subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Manager of the Land Office. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 3000.5 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(b) *Qualifications.* Compliance with subpart 3102 is required.

(c) *Approval.* The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(d) *Rejection.* Except as provided in this section an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

(e) *Curable defects.* An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(1) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

(2) An offer covering not more than 10 percent over the maximum allowable acreage of 2,560 acres. The lease will be approved for 2,560 acres in the discretion of the signing officer or so much over that amount as may be included under the rule of approximation.

(3) An offer completed in pencil or script.

(4) An offer on a lease form not currently in use.

(5) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

§ 3111.1–2 Acquired lands.

(a) *Application*—(1) *Forms.* Except as provided in subpart 3112, to obtain a noncompetitive oil and gas lease of an existing mineral interest whether the Government's interest be whole or fractional, an offer to lease must be made on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one-page form and are without additions, omissions, or other changes or advertising. An official form approved by the Director, or a valid reproduction, will also constitute the lease, when signed by the authorized signing officer of the Bureau of Land Management. Seven copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 3000.5). For the purposes of this part an offer will be considered filed when it is received in the proper office during business hours.

(2) *Qualifications.* Compliance with subpart 3102 is required.

(3) *Approval.* Such application or offer will be considered only as to the acquired lands described therein. If public domain lands or minerals are also included the application or offer will be rejected as to such lands or minerals.

(4) *Rejection.* Except as provided in subpart 3112 an offer which is not filed in accordance with the applicable regulations in subpart 3110 or this part will be rejected and will afford the applicant no priority.

(5) *Surface jurisdiction*—(i) *Showing required.* All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a permit or lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project, if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

(ii) *Transfer of surface control.* Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

(6) *Acreage holdings.* Each offer or application for a lease or permit must contain a statement that applicant's interest, direct or indirect, in leases, permits, or applications for similar minerals does not exceed the maximum chargeable acreage permitted to be held for that mineral in federally owned acquired lands in the same State.

(7) *Other regulations applicable.* Except as otherwise specifically provided in this part the regulations prescribed under the mineral leasing laws, and contained in subpart 3110 and § 3111.1 shall govern the disposal and development of minerals under the act.

§ 3111.1–3 Special acts.

(a) *Rights-of-way*—(1) *Application.* No particular form of application for lease of land in a right-of-way will be required. Applications shall be filed in

PART 3100—OIL AND GAS LEASING

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Subpart 3100—Oil and Gas Leasing

§ 3100.0–3 Authority.

(a) *Public domain.* (1) The act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.).

(2) Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181) applies to leases issued prior to the date of that act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

(b) *Acquired lands.* The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351–359). The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3, effective July 16, 1946 (3 CFR 1946 Supp., chapter IV) except as to leases or permits outstanding on August 7, 1947.

(c) *Withdrawn, reserved and segregated lands*—(1) *Protective leasing.* Issuance of protective leases authorized under sec. 441, Revised Statutes; 5 U.S.C. 485; see also Attorney General's Opinion of April 2, 1941 (Vol. 40 Op. Atty. Gen. 41).

(d) *Special Acts*—(1) *Rights-of-way.* The act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301–306), authorizes the Secretary of the Interior to lease deposits of oil and gas in and under railroad and other rights-of-way acquired under any law of the United States. The right of lease is restricted to the owner of the right-of-way, or his assignees.

(2) *Nevada.* The act of May 9, 1942 (56 Stat. 273) as amended by the act of October 25, 1949 (63 Stat. 886).

(3) *Lands patented to State of California.* The act of March 3, 1933 (47 Stat. 1487) as amended by the act of June 5, 1936 (49 Stat. 1482) and the act of June 29, 1936 (49 Stat. 2026).

(4) *National Forest Lands in Minnesota.* The act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(5) *Lake Mead Recreation Area.* The act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(6) *National Forest Wilderness.* Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(7) *Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the act of November 8, 1965 (Public Law 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture within the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

§ 3100.0–5 Definitions.

(a) *Known geologic structure.* A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

(b) *Sole party in interest.* A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

(c) *Regional oil and gas supervisor.* The Regional Oil and Gas Supervisor of the Geological Survey for the region in which lands under lease are situated.

(d) *Rule of approximation.* Where an application embraces an acreage in excess of the acreage limitation, it may be allowed for the excess acreage if exclusion of the smallest legal subdivision involved would result in a deficiency which would be greater than the excess resulting from the inclusion of such subdivision.

§ 3100.0–7 Cross-reference.

43 CFR 16.

§ 3100.0–9 Limitation on time to institute suit to contest a Secretary's decision.

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3100.1 Helium.

§ 3100.1–1 Ownership and rights.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium. (See 43 CFR Part 16.)

§ 3100.2 Minerals subject to leasing.

§ 3100.2–1 Oil and gas.

§ 3100.3 Drainage.

§ 3100.3–1 Compensation for drainage.

Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 3100.3–2 Drilling or payment of compensatory royalty.

Where land in any lease is being drained of its oil or gas content by a

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.
3120.1 Terms.
3120.1–1 Duration of lease.
3120.1–2 Dating of lease.
3120.1–3 Acreage limitation.
3120.1–4 Qualifications.
3120.2 Notice of lease sale.
3120.2–1 Initiation of offer.
3120.2–2 Publication of notice.
3120.2–3 Contents of notice.
3120.3 Approval.
3120.3–1 Award of lease.
3120.3–2 Compliance with award notice.
3120.4 Rejection.
3120.4–1 Failure to comply with award notice.
3120.4–2 Deposits on rejected bids.

§ 3120.1 Terms.

§ 3120.1–1 Duration of lease.

All competitive leases shall be for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3120.1–2 Dating of leases.

All competitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made, a lease may be dated the first of the month within which it is so signed.

§ 3120.1–3 Acreage limitation.

(a) *Maximum lease size.* The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible.

(b) *Consolidation of units.* If two or more units are awarded to any bidder, such units where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 3120.1–4 Qualifications.

(a) *Compliance with subpart 3102 is required.*—(1) Statement required. Each bidder must submit with his bid a statement over the bidder's own signature with respect to citizenship and interests held. If the successful bidder is a corporation, it must also file a statement similar to that required by § 3102.4–1.

(b) *Deposit required.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the Manager of the Land Office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him.

§ 3120.2 Notice of lease sale.

§ 3120.2–1 Initiation of offer.

§ 3120.2–2 Publication of notice.

Notice of the offer of lands for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer of the Bureau of Land Management may authorize.

§ 3120.2–3 Contents of notice.

The notice published in a newspaper of general circulation in the county will contain a statement that the successful bidder will be required, prior to the issuance of a lease to pay his proportionate share of the total cost of publication of that notice which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The notice will also state the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale.

§ 3120.3 Approval.

§ 3120.3–1 Award of lease.

Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office.

§ 3120.3–2 Compliance with award notice.

If the lease be awarded, three copies of the lease on a form approved by the Director, with rental and royalty schedules made a part thereof, will be sent to the successful bidder and he will be required not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later to execute them, pay the balance of his bonus bid, the first year's rental and file a bond as required in subpart 3104. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

§ 3120.4 Rejection.

§ 3120.4–1 Failure to comply with award notice.

If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act.

§ 3120.4–2 Deposits on rejected bids.

If any bid be rejected, the deposit will be returned.

PART 3130—FRACTIONAL OR FUTURE INTEREST LEASES AND PERMITS

Subpart 3130—Fractional or Future Interest Leases and Permits

Sec.
3130.1 Competitive and noncompetitive.
3130.2 Rental and royalties.
3130.3 Public domain.
3130.3–1 Fractional interest offers.
3130.4 Acquired lands.
3130.4–1 General statement.
3130.4–2 Consent of agency and stipulations required.
3130.4–3 Forms.
3130.4–4 Fractional present interests.
3130.4–5 Future and fractional interest offers.

§ 3130.1 Competitive and noncompetitive.

Competitive and noncompetitive oil and gas leases for lands in which the United States owns an undivided fractional oil and gas interest may be issued pursuant to the regulations in this part and subpart 3120.

§ 3130.2 Rental and royalties.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties and royalties provided in subpart 3103 as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

§ 3130.3 Public domain.

§ 3130.3–1 Fractional interest offers.

(a) Application. An offer for a fractional interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with subpart 3111. The offer must be accompanied by a statment showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a noncompetitive fractional interest oil and gas lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such result will be rejected.

§ 3130.4 Acquired lands.

§ 3130.4–1 General statement.

Subject to the provisions of section 3 of the Act, noncompetitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. Applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by §§ 3101.2–3, 3111.1–2 and this section. The terms and conditions of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field, and of compensatory royalty agreements

under § 3100.3–1 covering future or fractional interests, will be established on an individual case basis.

§ 3130.4–2 Consent of agency and stipulations required.

All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project if any, of which the land is a part. Leases to which such consent is necessary will not be issued until lessee executes such stipulations as may be required by the consenting agency.

§ 3130.4–3 Forms.

All oil and gas leases for existing interest on acquired lands whether the Government's interest be full or fractional shall be issued on a form approved by the Director. Leases of future interest and fractional future interest shall be issued on a form approved by the Director.

§ 3130.4–4 Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3130.4–5 Future and future fractional interest offers.

(a) *Application.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at that time will automatically lapse and thereafter only offers for a present interest lease will be considered. There is no required form for an application or offer to lease a whole or fractional future interest. The application or offer therefor should, however, to the extent applicable, conform to and include the information required by §§ 3101.2–3, 3111.1–2, and this section, and must be accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by three copies of such lease or contract. In lieu of an abstract, a certificate of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought, but it shall not include tracts where the United States owns the entire mineral interest at the time the offer is made.

(b) *Effective date of lease.* Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the Government's title to the minerals are different for different tracts, separate leases covering each of such different tracts will be issued.

(c) *Supplemental agreement.* As part of the consideration for the issuance of a future interest oil and gas lease and as supplemental thereto, the applicant shall execute and file in triplicate an agreement for approval by the Director. Such agreement will provide for the payment of annual rental in advance at the rate of 25 cents an acre for each tract until the future interest therein becomes possessory or until production is had on the lands described in the lease. After discovery, and until the lease becomes effective as to the respective tracts, the agreement will provide for the payment of a royalty on production, not less than 25 cents per acre per annum, at the particular rate that is applicable; when the interval from the date of receipt of said lease application to the date that the future interest will become possessory is:

	Percent
Not more than 5 years	5
More than 5 years, but not more than 10 years	4
More than 10 years, but not more than 15 years	3
More than 15 years	1

Such agreement will be effective as of the date the lease issues. Such agreement will govern the relationship of the applicant and the United States between its effective date and the respective dates when the lease becomes effective as to each future interest, as set forth in the lease. Where the United States owns both a fractional interest and a fractional future interest in the minerals in the same tract, the supplemental agreement will cover only the fractional future interest in that tract. The lease when issued shall cover both the present and future interests in the land and shall be effective for the present interest held by the United States as of the date for which the lease issues. In such cases and also in all cases where the United States owns only part of the future mineral interest the percentage of royalty specified in the supplemental agreement shall apply to the fractional future interest in that proportion. In lieu of a provision in the agreement for the payment of royalty by the future interest lease holder, the applicant, if not the owner of the present mineral interest, may obtain and file with the Bureau of Land Management an instrument executed in duplicate by the present mineral owner conveying or assigning to the United States the royalty interest set forth in the agreement applicable to the particular terms of years which will elapse before the United States becomes the owner of the mineral rights. If found acceptable, one original of such assignment will be returned to the applicant for recordation at his expense and for return to the Bureau of Land Management. In such case, the supplemental agreement should have endorsed on it by the applicant the statement that the assignment of such royalty interest to the United States is recognized by the holder of the agreement.

(d) *Approval.* Leases for a whole or fractional interest will be issued on a form approved by the Director. Such leases will be sent to the applicant or offeror for execution and return to the proper land office for execution by the appropriate officer. Thereafter, an executed copy will be mailed to lessee.

This Circular replaces Circulars 2258, 2314, and that portion of Circular 2331 relating to Part 3120.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2335]

PART 3850—ASSESSMENT WORK

Subpart 3851—Assessment Work; General

COMPLIANCE WITH MINING LAWS

On page 13153 of the FEDERAL REGISTER of July 15, 1971, there was published a notice and text of a proposed amendment of Subpart 3851 of Title 43, Code of Federal Regulations. The purpose of the amendment is to revise the regulations in light of the principles set out in Hickel v. Oil Shale Corporation, 400 U.S. 48 (1970). The Department's regulations relating to assessment work on mining claims state that failure to perform the required assessment work relates solely to the right of possession between rival or adverse claimants to the same mineral land. The Supreme Court's decision in Hickel v. Oil Shale Corporation shows that the existing regulation is not consistent with the law.

Interested persons were given until August 9 to submit comments, suggestions, or objections to the proposed amendment. As of September 7, 42 comments were received. Most persons objecting to the rulemaking stated that they believed the proposal went beyond the intent of the Supreme Court's decision. They read that decision as applying only to mining claims located for minerals now subject to leasing under the Mineral Leasing Act of 1920. This interpretation is based on the references in the opinion to the effect of the "Savings Clause" (section 37) of the Mineral Leasing Act of 1920.

The interpretation advocated in the comments and suggestions has been given careful consideration. The Department notes that the Court's opinion states that "the command of section 28 of the 1872 Act is that assessment work of $100 be done 'during the year' * * *"

The Court also characterizes as "dicta" statements in two earlier decisions (Wilbur v. Krushnic, 203 U.S. 306 (1930) and Ickes v. Virginia-Colorado Development Corporation, 295 U.S. 639 (1935)) that the failure to do assessment work is not ground for cancellation of a claim by the government. It goes on to state that "While the objective of the 1872 Act was to open the lands 'to a beneficial use by some other party,' once the original claimant defaulted, the defeasance inevitably accrued to the United States, owner of the fee. On that premise it would seem that the dicta in Krushnic and in Virginia-Colorado are not valid."

Questions about the exact intent and meaning of Hickel v. Oil Shale Corporation may ultimately have to be resolved in the courts. In the meantime, it is the Department's view that the proposed regulation correctly reflects the law as stated in that decision.

Therefore, the proposed amendment is hereby adopted without change, and is set forth below. This amendment shall become effective September 9, 1972.

HARRISON LOESCH,
Assistant Secretary of the Interior.

AUGUST 25, 1972.

Subpart 3851 is amended as follows:

1. Section 3851.3 is revised to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

(a) Failure of a mining claimant to comply substantially with the requirement of an annual expenditure of $100 in labor or improvements on a claim imposed by section 2324 of the Revised Statutes (30 U.S.C. 28) will render the claim subject to cancellation.

(b) Failure to make the expenditure or perform the labor required upon a location will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

§ 3851.4 [Deleted]

2. Section 3851.4 is deleted.

§§ 3851.4, 3851.5 [Redesignated]

3. Sections 3851.5 and 3851.6 are redesignated as §§ 3851.4 and 3851.5, respectively.

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GPO 837-836

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER E—FOREST MANAGEMENT (5000)

[Circular No. 2336]

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

PART 5490—ACTS SPECIFIC TO ALASKA

Sale of Timber on Public Lands

Part 5400 of Chapter II of Title 43 of the Code of Federal Regulations is amended as follows:

1. Section 5400.0–3 is revised to read as follows:

§ 5400.0–3 Authority.

(a) The Act of August 28, 1937 (43 U.S.C. 1181a) authorizes the sale of timber from the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and directs that such lands shall be managed for permanent forest production and the timber thereon sold, cut and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating streamflow and contributing to the economic stability of local communities and industries, and providing recreational facilities.

(b) The Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.) authorizes the disposal of timber and other vegetative resources on public lands of the United States including lands embraced within an unpatented mining claim located after July 23, 1955, if the disposal of such resources is not otherwise expressly authorized by law including, but not limited to, the Act of June 28, 1934, as amended (43 U.S.C. 315–315o–1) and the U.S. mining laws; is not expressly prohibited by laws of the United States; and would not be detrimental to the public interest.

(1) The act also authorizes the United States, its permittees, and licensees to use so much of the surface of any unpatented mining claim located under the mining law of the United States after July 23, 1955, as may be necessary for access to adjacent land for the purposes of such permittees or licensees. Any authorized use of the surface of any such mining claim shall be such as not to endanger or materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto.

(2) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this subpart only with the consent of such other Federal department or agency or of such State, or local governmental unit. The act provides, however, that the Secretary of Agriculture shall dispose of materials if such materials are on lands administered by the Secretary of Agriculture for national forest purposes or for purposes of Title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture.

(3) The provisions of the act in disposal of vegetative or mineral materials do not apply to lands in any national park, or national monument or to any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

(c) The Act of April 12, 1926, as amended (16 U.S.C. 617), limits the amount of unprocessed timber which may be sold for export from the United States from Federal lands located west of the 100th meridian to not more than 350 million board feet for each calendar year 1969 through 1973 inclusive. The act also provides that specific quantities and species of unprocessed timber surplus to the needs of domestic users may be designated as available for export in addition to the quantity stated above after public hearing and a finding to this effect by the appropriate Secretary of the Department administering Federal lands. Authority to issue rules and regulations to carry out the purpose of the act including the prevention of substitution of timber restricted from export for exported non-Federal timber is contained

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in section 2(c) of the act as amended. Authority to issue rules and regulations providing for the exclusion of the limitations imposed by the act for sales having an appraised value of less than $2,000 is contained in section 2(d) of the act as amended.

(1) The Secretary of the Interior and the Secretary of Agriculture shall determine annually the distribution among the Federal lands of the 350 million board feet of unprocessed timber which may be sold for export from Federal lands west of the 100th meridian.

(2) The rules and regulations issued to carry out the purposes of this act do not apply to Federal timber sold prior to January 1, 1969.

(3) The Director shall coordinate actions by other departmental agencies which are subject to this paragraph.

(d) Authority for small sales of timber for use in Alaska is contained in the Act of May 14, 1898, as amended (16 U.S.C. 615a).

2. Part 5490 is deleted in its entirety.

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 17, 1972.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2337]

PART 2530—INDIAN ALLOTMENTS

Subpart 2530—Indian Allotments: General

Part 2530 of Chapter II, Title 43 of the Code of Federal Regulations is amended as follows:

1. The second paragraph of paragraph (b) of § 2530.0–3 is designated as paragraph (c) and revised to read as follows:

§ 2530.0–3 Authority.

* * * * *

(c) *Executive Orders 6910 and 6964, Taylor Grazing Act of June 28, 1934.* Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, and land within grazing districts established under section 1 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 315), is not subject to settlement under Section 4 of the General Allotment Act of February 8, 1887, as amended, until such settlement has been authorized by classification. See Parts 2410, 2420, and 2430 of this chapter.

§§ 2531.1 and 2531.2 [Amended]

2. Subpart 2531 is corrected as follows: In § 2531.1(d) the words "entitled upon application to have" are changed to read "eligible upon application for." In lines 2 and 7 of § 2531.1(b), lines 17 and 18 of § 2531.1(d), line 4 of § 2531.1(e)(2) and line 12 of § 2531.2(a) the words "entitled to" are changed to read "eligible for." In line 12 of § 2531.1(d) and line 9 of § 2531.1(e)(2) the word "entitled" is changed to read "eligible."

3. In § 2531.1(e)(1) the words "white man or other person not entitled to an allotment" are changed to read "non-Indian not eligible for an allotment."

4. In § 2531.2 the words "manager of the land office for the district in which the land is situated" are changed to read "authorized officer."

5. Section 2531.3 is revised to read as follows:

§ 2531.3 Effect of application.

(a) Where an allotment application under the fourth section of the Act of February 8, 1887, as amended, 25 U.S.C. 334 (is not accompanied by the requisite certification from the Bureau of Indian Affairs showing the applicant to be eligible for an allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

(b) Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent application for the same land will be rejected.

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 24, 1972.

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Circular Distribution List

Replaced by Circ 2384

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2338]

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2800—Rights-of-Way: General

DEFINITIONS

Section 2800.0–5 paragraphs (a) and (h) are revised to read:

§ 2800.0–5 Definitions.

(a) "Secretary" means the Secretary of the Interior.

* * * * *

(h) "Reservation lands" includes national parks and monuments, or any other reservations of the United States for the use of or administration by the National Park Service, the Fish and Wildlife Service, the Bureau of Reclamation, or any agency outside the Department of the Interior.

* * * * *

HARRISON LOESCH,
Assistant Secretary of the Interior.

JANUARY 10, 1973.

[FR Doc.73–842 Filed 1–15–73;8:45 am]

Published in 38 F.R. 1587, January 16, 1973

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☆U.S. Government Printing Office: 1973-784-256/2162 Region 8

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER E—FOREST MANAGEMENT (5000)

[Circular 2339]

SALES OF FOREST PRODUCTS

Timber Sale Contract Procedures

Group 5400 of Chapter II of Title 43 of the Code of Federal Regulations is amended as follows:

PART 5400—SALES OF FOREST PRODUCTS; GENERAL

1. In § 5400.0–5 a new paragraph (m) is added to read as follows:

§ 5400.0–5 Definitions.

* * * * *

(m) "Loading point" means any landing or other area in which logs are capable of being loaded for transportation out of the contract area: *Provided, however,* That right-of-way timber which has been cut shall not be considered to be at a loading point until such time as logs from any source are actually transported over that portion of the right-of-way.

PART 5440—CONDUCT OF SALES

Subpart 5441—Advertised Sales

2. In § 5441.1–1 the last sentence is amended to read as follows:

§ 5441.1–1 Bid deposits.

* * * The deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer unless the deposit is a corporate surety bid bond or a bond is accepted by the Bureau to secure payment of the first installment.

3. Subpart 5442 is revised to read as follows:

Subpart 5442—Bidding Procedure

Sec.

5442.1 Procedure.
5442.2 Resale of timber from uncompleted contracts.
5442.3 Rejection of bids; waiver of minor deficiencies.

§ 5442.1 Bidding.

(a) Bidding at competitive sales shall be conducted by the submission of sealed bids, written bids, oral bids, or a combination of bidding methods as directed by the authorized officer.

(b) In sealed bid sales, the bidder submitting the highest sealed bid shall be declared the high bidder. In the event of a tie in high sealed bids, the high bidder shall be determined by lot from among those who submitted the tie bids.

(c) In oral auction sales, submission of the required minimum bid deposit and a written bid at not less than the advertised appraised price shall be required to participate in oral bidding. The officer conducting the sale shall declare a specific period, prior to oral bidding on each tract, during which bid deposits and written bids may be submitted. Bid deposits and written bids also may be submitted any time prior to the specific period declared by the officer conducting the sale. Oral bidding to determine the high bidder shall begin from the highest written bid after closure of the submittal period. In the event there is a tie in high written bids, and no oral bidding occurs, the bidder who was the first to submit his bid deposit and written bid shall be declared the high bidder. If the officer conducting the sale cannot determine who made the first submission of high tie written bids, the high bidder shall be determined by lot. The declared high bidder must confirm his oral bid in writing immediately after the sale, but failure to do so shall not relieve him of his purchase obligation.

§ 5442.2 Resale of timber from uncompleted contracts.

(a) Except as otherwise provided in this section, in the resale of timber remaining from an uncompleted timber sale contract, no bid will be considered from any person, or from an affiliate of such person, who failed to complete the original contract because of: (1) Cancellation for purchaser's breach; or (2) failure to cut designated timber on portions of the sale area and complete payment by the expiration date. As used in this section: "person" means an individual, partnership, corporation, or association; an "affiliate" means a person who controls or is controlled by another person.

(b) The provisions of paragraph (a) of this section shall apply only: (1) When 50 percent or more of the timber included in the resale is timber remaining from the uncompleted contract; or (2) when imposed because of failure to cut designated timber on portions of the sale area and to complete payments by the expiration date on contracts awarded after the effective date of this regulation.

Published in 38 F.R. 6280, March 8, 1973 - Effective July 1, 1973.

Circular Distribution List

§ 5442.3 Rejection of bids; waiver of minor deficiencies.

When the authorized officer determines it to be in the interest of the Government to do so, he may reject any or all bids and may waive minor deficiencies in the bids or the timber sale advertisement.

PART 5450—AWARD OF CONTRACT

Subpart 5450—Award of Contract; General

§ 5450.1 [Amended]

4. In § 5450.1 the third sentence of paragraph (a) and the first sentence of paragraph (b) are amended by changing "required performance bond" to read "required performance bond and any required payment."

5. Subpart 5451 is amended as follows:

The heading of Subpart 5451 is amended by changing "Performance Bond" to read "Bonds", the heading of § 5451.1 is amended by changing "Minimum bond requirements; types." to read "Minimum performance bond requirements; types."; § 5451.3 is revised, the heading of § 5451.3 is amended by changing "Bond reduction" to read "Performance bond reduction", and a new § 5451.4 is added. As amended Subpart 5451 reads as follows:

Subpart 5451—Bonds

§ 5451.1 Minimum performance bond requirements; types.

* * * * *

Subpart 5451—Bonds

Sec.
5451.1 Minimum performance bond requirements; typs.
5451.2 Performance bonds in excess of minimum.
5451.3 Performance bond reduction.
5451.4 Payment bond.

§ 5451.2 Performance bonds in excess of minimum.

(a) To obtain permission for the delayed payment of the first installment, the purchaser must increase the minimum performance bond required by § 5451.1(a) by an amount equal to the first installment. The increased bond must be on a form approved by the Director and upon completion must be approved by the authorized officer. If a bond of corporate surety is used, the bond shall provide that the surety will make payment to the Bureau of the amount of the increase within 60 days after demand therefor by the Bureau whenever the purchaser shall fail to make payment as required by § 5461.2(a)(2) of this chapter.

(b) To obtain permission to cut timber before payment of the second or a subsequent installment the purchaser must increase the minimum performance bond required by § 5451.1(a) by an amount equal to one or more installment payments, as determined by the authorized officer. The adjusted bond must be approved by the authorized officer in writing prior to cutting any timber under the adjusted bond.

§ 5451.3 Performance bond reduction.

* * * * *

§ 5451.4 Payment bond.

To obtain permission to (a) cut and remove timber, or (b) remove timber already cut, which has been secured by an increased performance bond as provided for in § 5451.2(b), before payment of the second or subsequent installments, the purchaser must obtain a payment bond in an amount equal to one or more installment payments as determined by the authorized officer. The payment bond may be a bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department and executed on an approved form or negotiable securities of the United States. The payment bond must be approved by the authorized officer in writing prior to cutting or removing any timber under the bond. If a bond of a corporate surety is used, the payment bond shall provide that if the purchaser fails to make payment as required by § 5461.2(a)(4) of this chapter, the surety will make such payment including any required interest to the Bureau within 60 days after demand therefor by the Bureau. With the written approval of the authorized officer a single blanket payment bond may be allocated to two or more contracts with the same purchaser in the same Bureau of Land Management administrative district.

PART 5460—SALES ADMINISTRATION

Subpart 5461—Contract Payments

§ 5461.1 [Amended]

6. In § 5461.1, the first sentence is amended by changing the reference "§ 5451.2" to read "§§ 5451.2 and 5451.4."

7. In § 5461.2, paragraph (a)(2) is revised and paragraphs (a) (3) and (4) are added. As amended § 5461.2 reads as follows:

§ 5461.2 Installment payment requirements.

(a) Contract installment payments shall be determined by authorized officer as follows:

* * * * *

(2) *Delayed payment of first installment.* Payment of the first installment required in subparagraph (1) of this paragraph may be delayed if the purchaser increases the performance bond as provided by § 5451.2(a) of this chapter. If delayed payment of first installment is approved by the authorized officer, cash payment for that installment must be made either before the cutting or removing of the last portion of timber sold under the contract having a value equal to the amount of the first installment or at any time the Bureau exercises its authority to cancel the rights of the purchaser under the terms of the contract, whichever occurs first.

(3) *Delayed payment of second or subsequent installments.* Delayed payment of the second or a subsequent installment may be allowed if the purchaser furnishes a bond as provided by § 5451.2 (b) of this chapter. The first installment shall be paid in the same manner as provided in paragraph (a) (1) and (2) of this section. If cutting is permitted before payment, as provided by § 5451.2 (b) of this chapter, payment by installment shall be made before timber may be skidded or yarded to a loading point or removed from the contract area. Each subsequent installment shall be due and payable without notice when the sale value of the timber skidded or yarded to a loading point or removed equals the sum of all the payments minus the first installment. The unenhanced value of timber allowed to be cut in advance of payment is limited to the amount of the increase over and above the required minimum performance bond. Upon payment, the amount of the bond may be applied to other timber sold under the contract to permit its cutting in advance of payment.

(4) *Payment where cutting or removal has been permitted under payment bond authorized by § 5451.4 of this chapter.* The first installment shall be paid in the same manner as provided in subparagraphs (1) and (2) of this paragraph. If cutting and/or removal is permitted before payment, as provided by § 5451.4 of this chapter, the purchaser shall be billed monthly for timber skidded or yarded to a loading point or removed from the contract area and for any related road maintenance fees unless a lesser period is agreed to by the Bureau and the purchaser. Payment shall be made within 15 days of the billing date shown on the billing form. The unenhanced value of timber allowed to be cut and/or removed in advance of payment is limited to the amount of the payment bond. Upon payment, the amount of the bond may be applied to other timber.

Subpart 5463—Expiration of Time for Cutting and Removal

§ 5463.1 [Amended]

8. In § 5463.1 the words "thirty months" are changed to read "thirty-six months."

JOHN C. WHITAKER,
Acting Secretary of the Interior.

MARCH 1, 1973.

[FR Doc.73-4491 Filed 3-7-73;8:45 am]

GPO 846-851

Title 43—PUBLIC LANDS: INTERIOR

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

[Circular No. 2340]

Reorganization of the Conservation Division, U.S. Geological Survey

As a result of the reorganization of the Conservation Division of the Geological Survey, the title "Regional Mining Supervisor" has been changed to "Area Mining Supervisor"; the title "Regional Oil and Gas Supervisor" has been changed to "Area Oil and Gas Supervisor"; and the territory over which each official has jurisdiction has been changed from "region" to "area".

Accordingly, whenever these terms appear in chapter II of subtitle B of title 43 of the Code of Federal Regulations they are changed as follows: (1) "Regional Mining Supervisor" is changed to "Area Mining Supervisor", (2) "Regional Oil and Gas Supervisor" is changed to "Area Oil and Gas Supervisor", and (3) "region" is changed to "area" when used to refer to the territory over which these officials have jurisdiction.

These amendments cover only an internal administrative matter resulting in no substantive change in the regulations affecting the public. It is unnecessary and impracticable to give notice of proposed rulemaking and invite public participation. This amendment shall become effective on April 23, 1973.

Dated April 17, 1973.

STEPHEN A. WAKEFIELD,
Assistant Secretary of the Interior.

[FR Doc.73-7736 Filed 4-20-73;8:45 am]

Published in 38 F.R. 10009, April 23, 1973 - Effective April 23, 1973.

Circular Distribution List

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Circular Elections List

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Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

[Circular No. 2341]

PART 23—SURFACE EXPLORATION, MINING AND RECLAMATION OF LANDS

Amedments To Reflect Reorganization of the Conservation Division, Geological Survey

Part 23 of title 43 of the Code of Federal Regulations is amended as set forth below:

1. Paragraph (c) of § 23.3 is revised to read as follows:

§ 23.3 Definitions.

* * * * *

(c) "Mining Supervisor" means the Area Mining Supervisor, or his authorized representative, of the Geological Survey authorized as provided in 30 CFR 211.3 and 231.2 to supervise operations on the land covered by a permit or lease;

* * * * *

2. Paragraphs (a) and (b) of § 23.12 are revised to read as follows:

§ 23.12 Appeals.

(a) A person adversely affected by a decision or order of a district manager or of a mining supervisor made pursuant to the provisions of this part shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, whenever the decision appealed from was rendered by a district manager, or to the Director of the Geological Survey if the decision or order appealed from was rendered by a mining supervisor, and the further right to appeal to the Board of Land Appeals from an adverse decision of the Director of the Geological Survey unless such decision was approved by the Secretary prior to promulgation.

(b) Appeals to the Board of Land Appeals shall be made pursuant to part 4 of this title. Appeals to the Director of the Geological Survey shall be made in the manner provided in 30 CFR part 290.

Dated April 17, 1973.

STEPHEN A. WAKEFIELD,
Assistant Secretary of the Interior.

[FR Doc.73-7735 Filed 4-20-73;8:45 am]

Published in 38 F.R. 10008, April 23, 1973 - Effective April 23, 1973.

Circular Distribution List

Published in 38 F.R. 10808, Ap-11-73, 23, 1973 - Effective Apr-11 23, 1973.

Circular Distribution List:

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT; DEPARTMENT OF THE INTERIOR

[Circular No. 2342]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

CHANGES OF OFFICIAL TITLES

1. Section 1821.2 of chapter II, title 43 of the Code of Federal Regulations is revised to read as follows:

§ 1821.2 Office hours; place for filing; time limit.

§ 1821.2–1 Office hours; place for filing.

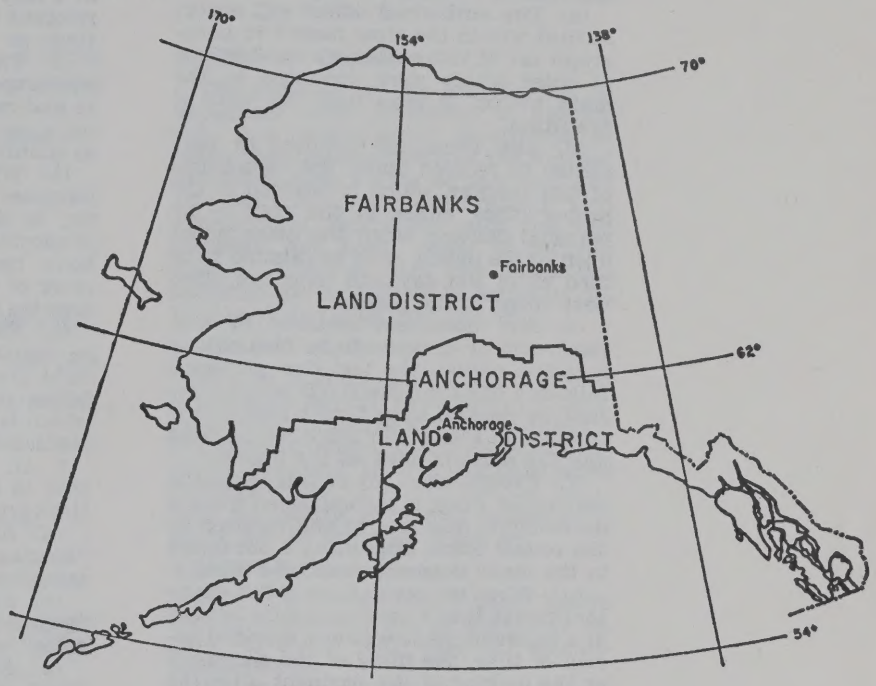
(a) The offices listed in paragraph (d) of this section are open to the public on Monday through Friday for the filing of applications and other documents and inspection of records from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which the office is located, with the exception of those days when the office may be closed because of a national holiday or by Presidential or other administrative order.

(b) Applications and other documents cannot be received for filing by the authorized officer out of office hours, nor elsewhere than at his office; nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

(c) Copies of forms may be obtained from any of the offices listed under paragraph (d) of this section. However, completed forms and other documents must be filed in the office having jurisdiction.

(d) Location of the offices and area of jurisdiction of each office in which applications for rights and privileges under subchapters A, B, and C of this title must be filed are as follows:

Office:	*Area of jurisdiction*
Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.	Southern Alaska.[1]
Fairbanks District Office, 1028 Aurora Drive, Fairbanks, Alaska 99707.	Northern Alaska.[1]



FOOTNOTE 1.

Arizona State Office, Federal Building, Phoenix, Ariz. 85025.	Arizona.
California State Office, Federal Building, 2800 Cottage Way, Sacramento, Calif. 95825.	California.
Colorado State Office, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202.	Colorado.
Eastern States Office, 7931 Eastern Avenue, Silver Spring, Md. 20910.	Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River.
Idaho State Office, Federal Building, Boise, Idaho 83701.	Idaho.
Montana State Office, Federal Building, and U.S. Courthouse, 316 North 26th Street, Billings, Mont. 59101.	Montana, North Dakota, and South Dakota.
Nevada State Office, Federal Building, and U.S. Courthouse, 300 Booth Street, Reno, Nev. 89502.	Nevada.
New Mexico State Office, U.S. Post Office and Federal Building, South Federal Place, Santa Fe, N. Mex. 87501.	New Mexico, Oklahoma, and Texas.
Oregon State Office, 729 Northeast Oregon Street, Portland, Oreg. 97208.	Oregon and Washington.
Utah State Office, Federal Building, Salt Lake City, Utah 84111.	Utah.
Wyoming State Office, U.S. Post Office and Courthouse, 2120 Capitol Avenue, Cheyenne, Wyo. 82001.	Wyoming, Kansas, and Nebraska.

[1] See diagram for division line.

Published in 38 F.R. 12110, May 9, 1973.

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§ 1821.2–2 Time limit for filing documents.

(a) The authorized officer will reject all applications to make entry which are executed more than 10 days prior to filing.

(b) Such rejections should be subject to the right of appeal and to the right to file a new and properly executed application, or to reexecute the rejected application, without priority.

(c) The authorized officer will accept as filed within the time named in paragraph (a) of this section all applications to enter which were deposited in the mails within 10 days from the date of execution.

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public.

(f) Except when (c) of this section is applicable, filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing.

(g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

1. The law does not permit him to do so.

2. The rights of a third party or parties have intervened.

3. The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

§ 1821.2–3 Simultaneous filings; determination of order of priority.

(a) Two or more documents are considered as simultaneously filed when:

(1) In accordance with the regulations in § 1821.2–2, they are delivered to and received by the proper office at the same time; or

(2) They are filed pursuant to an order which specifies that documents delivered to and received by the proper office during a specified period shall be considered as simultaneously filed.

(b) Whenever it is necessary, for the purposes of the regulations in this chapter, to determine the order of priority of consideration among documents which have been simultaneously filed, such order of priority will be established by a drawing open to public view.

(c) Nothing in this regulation shall be construed as denying any preference right granted by applicable law or regulation or as validating any document which is invalid under applicable law or regulation.

2. All other portions of chapter II of title 43 of the Code of Federal Regulations are amended as follows:

(a) All references to "examiner" or "hearing examiner" are changed to "Administrative Law Judge."

(b) All references to "land office", "proper land office", or "district and land office" are changed to "proper office."

(c) All references to "manager" and "land office manager" are changed to "authorized officer."

JACK O. HORTON,
Assistant Secretary of the Interior.

May 2, 1973.

[FR Doc.73–9085 Filed 5–8–73;8:45 am]

GPO 848-067

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular No. 2343]

PART 2650—ALASKA NATIVE SELECTIONS

Subpart 2650—Alaska Native Selections—Generally

Subpart 2651—Village Selections

Subpart 2652—Regional Selections

Subpart 2653—Miscellaneous Selections

Subpart 2654—Native Reserves

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Plan-Coord.
Public Affairs (1)
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Mgmt. Serv. (copies)
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Group 2600 of chapter II, title 43 of the Code of Federal Regulations is amended as follows:

Subpart 2650—Alaska Native Selections—Generally

Sec.
2650.0–1 Purpose.
2650.0–2 Objectives.
2650.0–3 Authority.
2650.0–5 Definitions.
2650.0–7 References.
2650.0–8 Waiver.
2650.1 Provisions for interim administration.
2650.2 Application procedures for land selections.
2650.3 Lawful entries, lawful settlements, and mining claims.
2650–1 Lawful entries and lawful settlements.
2650.3–2 Mining claims.
2650.4 Conveyance reservations.
2650.4–1 Existing rights and contracts.
2650.4–2 Succession of interest.
2650.4–3 Administration.
2650.4–4 Revenues [Reserved].
2650.4–5 National forest lands.
2650.4–6 National wildlife refuge system lands.
2650.4–7 Public easements.
2650.5 Survey requirements.
2650.5–1 General.
2650.5–2 Rule of approximation.
2650.5–3 Regional surveys.
2650.5–4 Village surveys.
2650.5–5 Cemetery sites and historical places.
2650.5–6 Adjustment to plat of survey.
2650.6 Selection limitations.
2650.7 Publication.
2650.8 Appeals.

Subpart 2650—Alaska Native Selections—Generally

§ 2650.0–1 Purpose.

The purpose of the regulations in this part is to provide procedures for orderly and timely implementation of those provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) which pertain to selections of lands and interests in lands in satisfaction of the land selections conferred by said act upon Alaska Natives and Alaska Native corporations.

§ 2650.0–2 Objectives.

The program of the Secretary is to implement such provisions in keeping with the congressional declaration of policy that the settlement of the Natives' aboriginal land claims be fair and just and that it be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation and with maximum participation by Natives in decisions affecting their rights and property.

§ 2650.0–3 Authority.

Section 25 of the Alaska Native Claims Settlement Act of December 18, 1971, authorizes the Secretary of the Interior to issue and publish in the FEDERAL REGISTER, pursuant to the Administrative Procedure Act (5 U.S.C. 551, et seq.), such regulations as may be necessary to carry out the purposes of the act.

§ 2650.0–5 Definitions.

(a) "Act" means the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) and any amendments thereto.

(b) "Secretary" means the Secretary of the Interior or his authorized delegate.

(c) "Native" means a Native as defined in section 3(b) of the act.

(d) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska, as defined in section 3(c) of the act.

(e) "Village corporation" means a profit or nonprofit Alaska Native village corporation which is eligible under § 2651.2 of this chapter to select land and receive benefits under the act, and is organized under the laws of the State of Alaska in accordance with the provisions of section 8 of the act.

(f) "Regional corporation" means an Alaska Native regional corporation organized under the laws of the State of Alaska in accordance with the provisions of section 7 of the act.

(g) "Public lands" means all Federal lands and interests in lands located in

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Circular Distribution List

Alaska (including the beds of all nonnavigable bodies of water), except:

(1) The smallest practicable tract, as determined by the Secretary, enclosing land actually used, but not necessarily having improvements thereon, in connection with the administration of a Federal installation; and,

(2) Land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341; 77 Stat. 223; 48 U.S.C. ch. 2), or identified for selection by the State prior to January 17, 1969, except as provided in § 2651.4(a)(1) of this chapter.

(h) "Interim conveyance" as used in these regulations means the conveyance granting to the recipient legal title to unsurveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law, subject only to confirmation of the boundary descriptions after approval of the survey of the conveyed land.

(i) "Patent" as used in these regulations means the original conveyance granting legal title to the recipient to surveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law; or the document issued after approval of the survey by the Bureau of Land Management, to confirm the boundary description of the unsurveyed conveyed lands.

(j) "Conveyance" as used in these regulations means the transfer of title pursuant to the provisions of the act whether by interim conveyance or patent, whichever occurs first.

(k) "National Wildlife Refuge System" means all lands, waters, and interests therein administered on December 18, 1971, by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas, as provided in the act of October 15, 1966, 80 Stat. 927, as amended by the act of July 18, 1968, 82 Stat. 359 (16 U.S.C. 668dd).

(l) "Protraction diagram" means the approved diagram of the Bureau of Land Management mathematical plan for extending the public land surveys and does not constitute an official Bureau of Land Management survey, and, in the absence of an approved diagram of the Bureau of Land Management, includes the State of Alaska protraction diagrams which have been authenticated by the Bureau of Land Management.

(m) "Date of filing" shall be the date of postmark, except when there is no postmark, in which case it shall be the date of receipt in the proper office.

§ 2650.0–7 References.

(a) Native enrollment procedures are contained in 25 CFR 43h.

(b) Withdrawal procedures are contained in part 2300 of this chapter.

(c) Application procedures are contained in subpart 1821 of this chapter.

(d) Appeals procedures are contained in 43 CFR part 4.

(e) Mineral patent application procedures are contained in part 3860 of this chapter.

§ 2650.0–8 Waiver.

The Secretary may, in his discretion, waive any nonstatutory requirement of these regulations. When the rights of third parties will not be impaired, and when rapid, certain settlement of the claims of Natives will be assisted, minor procedural and technical errors should be waived.

§ 2650.1 Provisions for interim administration.

(a)(1) Prior to any conveyance under the act, all public lands withdrawn pursuant to sections 11, 14, and 16, or covered by section 19 of the act, shall be administered under applicable laws and regulations by the Secretary of the Interior, or by the Secretary of Agriculture in the case of national forest lands, as provided by section 22(i) of the act. The authority of the Secretary of the Interior and of the Secretary of Agriculture to make contracts and to issue leases, permits, rights-of-way, or easements is not impaired by the withdrawals.

(2)(i) Prior to the Secretary's making contracts or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or villages shall be obtained and considered, except as provided in subdivision (ii) of this subparagraph.

(ii) Prior to making contracts, or issuing leases, permits, rights-of-way, or easements on lands subject to election pursuant to section 19(b) of the act, the Secretary shall obtain the consent of the representatives of the Natives living on those lands.

(b) As provided in section 17(d)(3) of the act, any lands withdrawn pursuant to section 17(d) shall be subject to administration by the Secretary under applicable laws and regulations and his authority to make contracts, and to issue leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal. To the extent that any such land is also subject to the provisions of paragraph (a) of this section, the provisions of that subsection shall govern.

(c) As provided in section 21(e) of the act, so long as there are no substantial revenues from real property interests conveyed pursuant to this act and the lands are not subject to State and local real property taxes, such lands shall continue to receive forest fire protection services from the United States at no cost. The Secretary will promulgate criteria, after consultation with the concerned Native corporations and the State of Alaska, for determining when substantial reveunes are accruing as to lands for which forest fire protection services are furnished by the Department of the Interior and no discontinuance of such service will be ordered by the Secretary unless he finds, after notice and opportunity for submission of views, that such discontinuance is in conformity with the criteria.

§ 2650.2 Application procedures for land selections.

(a) Applications for land selections must be filed on forms approved by the Director, Bureau of Land Management. Applications must be filed in accordance with subpart 1821 of this chapter.

(b) Each regional corporation shall submit with its initial application under this section a copy of the resolution authorizing the individual filing the application to do so.

(c) Each village corporation under subpart 2651 of this chapter must submit with its initial application under this section a certificate of incorporation, evidence of approval of its articles of incorporation by the regional corporation for that region, and a copy of the authorization of the individual filing the application to do so.

(d) (1) Regional and village corporations authorized by the act subsequently filing additional or amendatory applications need only refer to the serial number of the initial filing.

(2) Any change of the officer authorized to act for any corporation in the matter of land selections should be promptly submitted to the appropriate office of the Bureau of Land Management.

(e) (1) If the lands applied for are surveyed, the legal description of the lands in accordance with the official plats of survey shall be used.

(2) If the lands applied for are unsurveyed, they shall be described by protraction diagrams.

(3) If the lands applied for are not surveyed and are not covered by protraction diagrams, they must be described by metes and bounds commencing at a readily identifiable topographic feature, such as a mountain peak, mouth of a stream, ect., or a monumented point of known position, such as a triangulation station, and the description must be accompanied by a topographic map delineating the boundary of the area applied for.

(4) Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have been published, these maps shall be used to portray and describe the lands applied for. Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have not been published, then the 1:250,000 U.S.G.S. quadrangle maps with the protraction diagrams plotted thereon shall be used.

(5) If the written description shown on the application and the map portrayal accompanying the application do not agree the delineation shown on the map shall be controlling.

(f) The selected areas may be adjusted by the Secretary with the consent of the applicant and amendment of the application by the applicant, provided that the adjustment will not create an excess over the selection entitlement.

§ 2650.3 Lawful entries, lawful settlements, and mining claims.

§ 2650.3–1 Lawful entries and lawful settlements.

(a) Pursuant to sections 14(g) and 22(b) of the act, all conveyances issued under the act shall exclude any lawful entries or entries which have been perfected under, or are being maintained in compliance with, laws leading to the acquisition of title, but shall include land subject to valid existing rights of a temporary or limited nature such as those created by leases (including leases issued under section 6(g) of the Alaska Statehood Act), contracts, permits, rights-of-way, or easements.

(b) The right of use and occupancy of persons who initiated lawful settlement or entry of land, prior to August 31, 1971, is protected: *Provided,* That:

(1) Occupancy has been or is being maintained in accordance with the appropriate public land law, and

(2) Settlement or entry was not in violation of Public Land Order No. 4582, as amended. Any person who entered or settled upon land in violation of that public land order has gained no rights.

(c) In the event land excluded from conveyance under paragraph (a) of this section reverts to the United States, the grantee or his successor in interest shall be afforded an opportunity to acquire such land by exchange pursuant to section 22(f) of the act.

§ 2650.3–2 Mining claims.

(a) *Possessory rights.*—Pursuant to section 22(c) of the act, on any lands to be conveyed to village or regional corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location, including millsites, under the general mining laws and recorded notice thereof with the appropriate State or local office, shall not be challenged by the United States as to his possessory rights, if all requirements of the general mining laws are met. However, the validity of any mining claim may be challenged by the United States or by the grantee or his successor in interest at any time.

(b) *Patent requirements met.*—An acceptable mineral patent application must be filed with the appropriate Bureau of Land Management office not later than December 18, 1976, on lands conveyed to village or regional corporations.

(1) Upon a showing that a mineral survey cannot be completed by December 18, 1976, the filing of an application for a mineral survey, which states on its face that it was filed for the purpose of proceeding to patent, will constitute an acceptable mineral patent application, provided all applicable requirements under the general mining laws have been met.

(2) The failure of an applicant to prosecute diligently his application for mineral patent to completion will result in the loss of benefits afforded by section 22(c) of the act.

(3) The appropriate office of the Bureau of Land Management shall give notice of the filing of an application

under this section to the village or regional corporation which has selection rights in the land covered by the application.

(c) *Patent requirements not met.*—Any mineral patent application filed after December 18, 1976, on land conveyed to any village or regional corporation pursuant to this act, will be rejected for lack of departmental jurisdiction. After that date, patent applications may continue to be filed on land not conveyed to village or regional corporations until such land is conveyed.

§ 2650.4 Conveyance reservations.

§ 2650.4–1 Existing rights and contracts.

Any conveyance issued for surface and subsurface rights under this act will be subject to any lease, contract, permit, right-of-way, or easement and the rights of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted him.

§ 2650.4–2 Succession of interest.

Upon issuance of any conveyance under this authority, the grantee thereunder shall succeed and become entitled to any and all interests of the State of Alaska or of the United States as lessor, contractor, permitter, or grantor, in any such lease, contract, permit, right-of-way, or easement covering the estate conveyed, subject to the provisions of section 14(g) of the act.

§ 2650.4–3 Administration.

Leases, contracts, permits, rights-of-way, or easements granted prior to the issuance of any conveyance under this authority shall continue to be administered by the State of Alaska or by the United States after the conveyance has been issued, unless the responsible agency waives administration. Where the responsible agency is an agency of the Department of the Interior, administration shall be waived when the conveyance covers all the land embraced within a lease, contract, permit, right-of-way, or easement, unless there is a finding by the Secretary that the interest of the United States requires continuation of the administration by the United States. In the latter event, the Secretary shall not renegotiate or modify any lease, contract, right-of-way or easement, or waive any right or benefit belonging to the grantee until he has notified the grantee and allowed him an opportunity to present his views.

§ 2650.4–4 Revenues [Reserved]

§ 2650.4–5 National forest lands.

Every conveyance which includes lands within the boundaries of a national forest shall, as to such lands, contain reservations that:

(a) Until December 18, 1976, the sale of any timber from the land is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and,

(b) Until December 18, 1983, the land shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands.

§ 2650.4–6 National wildlife refuge system lands.

(a) Every conveyance which includes lands within the national wildlife refuge system shall, as to such lands, provide that the United States has the right of first refusal so long as such lands remain within the system. The right of first refusal shall be for a period of 120 days from the date of notice to the United States that the owner of the land has received a bona fide offer of purchase. The United States shall exercise such right of first refusal by written notice to the village corporation within such 120-day period. The United States shall not be deemed to have exercised its right of first refusal if the village corporation does not consummate the sale in accordance with the notice to the United States

(b) Every conveyance which covers lands lying within the boundaries of a national wildlife refuge in existence on December 18, 1971, shall provide that the lands shall remain subject to the laws and regulations governing use and development of such refuge so long as such lands remain in the refuge. Regulations governing use and development of refuge lands conveyed pursuant to section 14 shall permit such uses that will not materially impair the values for which the refuge was established.

§ 2650.4–7 Public easements.

(a) Prior to reserving any public easements under section 17(b) of the act, the concerned village and regional corporations shall be afforded notice and opportunity for submission of views. If the Secretary determines that a public easement should be reserved in any conveyance, the reasons for that determination will be provided in writing, upon request of the grantee.

(b) (1) A public easement shall be reserved only if it is specific as to use and corridor location and size and both use and corridor location and size shall be reasonably related to an anticipated public use or a planned or existing governmental function.

(2) No public easement shall be reserved in such manner as to:

(i) Deprive the grantee or its successor in interest of reasonable access to bodies of water or highways in or bordering upon the land embraced in the conveyance without his consent.

(ii) Constitute a so-called scenic easement.

(c) A reserved public easement shall be subject to the following conditions:

(1) The Secretary shall terminate a public easement if it is not used for its purpose by the date specified in the conveyance, but in any event not later than December 18, 2001, or if he finds that conditions are such that its retention is

no longer needed for public use or governmental function.

(2) The grantee or its successor in interest shall be entitled to just compensation for the loss of value of any improvements existing on the date of the reservation of the easement which are impaired or required to be removed by the exercise of the easement.

(3) The easement shall be no more extensive in size than is reasonably required for the purpose for which reserved. Upon the definite location of an easement or easements for which a corridor was reserved, the reservation to the extent not used for the easement or easements shall be of no further force or effect.

(4) A corridor location shall be no more extensive in width or length than is reasonably necessary to locate any easement to be reserved, taking into consideration climate, topography, terrain, and available data.

(d) The State and the Federal-State Land Use Planning Commission shall be afforded 90 days after notice by the Secretary to make recommendations with respect to the inclusion of public easements in any conveyance.

§ 2650.5 Survey requirements.

§ 2650.5–1 General.

(a) Selected areas are to be surveyed as provided in section 13 of the act. Any survey or description used as a basis for conveyance must be adequate to identify the lands to be conveyed.

(b) Surveys shall take into account the navigability or nonnavigability of bodies of water. The beds of all bodies of water determined by the Secretary to be navigable shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlements under the act. Prior to making his determination as to the navigability of a body of water, the Secretary shall afford the affected regional corporation the opportunity to review the data submitted by the State of Alaska on the question of navigability and to submit its views on the question of navigability. Upon request of a regional corporation or the State of Alaska, the Secretary shall provide in writing the basis upon which his final determination of navigability is made. The beds of all bodies of water not determined to be navigable shall be included in the surveys as public lands, shall be included in the gross area of the surveys, and shall be charged to total acreage entitlements under the act. The beds of all nonnavigable bodies of water comprising one half or more of a section shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlement under the act, unless the section containing the body of water is expressly selected or unless all the riparian land surrounding the body of water is selected. No ground survey or monumentation will be required to be done by the Bureau of Land Management of bodies of water.

§ 2650.5–2 Rule of approximation.

To assure full entitlement, the rule of approximation may be applied with respect to the acreage limitations applicable to conveyances and surveys under this authority, i.e., any excess must be less than the deficiency would be if the smallest legal subdivision were eliminated (see 62 I.D. 417, 421).

§ 2650.5–3 Regional surveys.

Lands to be conveyed to a regional corporation, when selected in contiguous units, shall be together for the purpose of survey and surveyed as one tract, with monuments being established on the exterior boundary at angle points and at intervals of approximately 2 miles on straight lines. If requested by the grantee, the Secretary may survey, insofar as practicable, the individual selections that comprise the total tract.

§ 2650.5–4 Village surveys.

(a) Only the exterior boundaries of contiguous entitlements for each village corporation will be surveyed. Where land within the outer perimeter of a selection is not selected, the boundaries along the area excluded shall be deemed exterior boundaries. The survey will be made after the total acreage entitlement of the village has been selected.

(b) Surveys will be made within the village corporation selections to delineate those tracts required by law to be conveyed by the village corporations pursuant to section 14(c) of the act.

(c)(1) The boundaries of the tracts described in paragraph (b) of this section shall be posted on the ground and shown on a map which has been approved in writing by the affected village corporation and submitted to the Bureau of Land Management. Conflicts arising among potential transferees identified in section 14(c) of the act, or between the village corporation and such transferees, will be resolved prior to submission of the map. Occupied lots to be surveyed will be those which were occupied as of December 18, 1971.

(2) Lands shown by the records of the Bureau of Land Management as not having been conveyed to the village corporation will be excluded by adjustments on the map by the Bureau of Land Management. No surveys shall begin prior to final written approval of the map by the village corporation and the Bureau of Land Management. After such written approval, the map will constitute a plan of survey. Surveys will then be made in accordance with the plan of survey. No further changes will be made to accommodate additional section 14(c) transferees, and no additional survey work desired by the village corporation or municipality within the area covered by the plan of survey or immediately adjacent thereto will be performed by the Secretary.

§ 2650.5–5 Cemetery sites and historical places.

Only those cemetery sites and historical places to be conveyed under sec-

tion 14(h)(1) of the act shall be surveyed.

§ 2650.5–6 Adjustment to plat of survey.

All conveyances issued for lands not covered by officially approved surveys of the Bureau of Land Management shall note that upon the filing of an official plat of survey, the boundary of the selected area, described in terms of protraction diagrams or by metes and bounds, shall be redescribed in accordance with the plats of survey. However, no change will be made in the land selected.

§ 2650.6 Selection limitations.

(a) Notwithstanding any other provisions of the act, no village or regional corporation may select lands which are within 2 miles from the boundary of any home rule or first-class city (excluding boroughs) as the boundaries existed and the cities were classified on December 18, 1971, or which are within 6 miles from the boundary of Ketchikan, except that a village corporation organized by Natives of a community which is itself a first class or home-rule city is not prohibited from making selections within 2 miles from the boundary of that first class or home-rule city, unless such selections fall within 2 miles from the boundary of another first class or home-rule city which is not itself a Native village or within 6 miles from the boundary of Ketchikan.

(b) Determination as to which cities were classified as home rule or first class as of December 18, 1971, and their boundaries as of that date will be made in accordance with the laws of the State of Alaska.

(c) If any village corporation whose land withdrawals encompass Dutch Harbor is found eligible under this act, it may select lands pursuant to subpart 2651 of this chapter and receive a conveyance under the terms of section 14(a) of the act.

§ 2650.7 Publication.

In order to determine whether there are any adverse claimants to the land, the applicant should publish notice of his application. If the applicant decides to avail himself of the privilege of publishing a notice to all adverse claimants and requests it, the authorized officer will prepare a notice for publication. The publication will be in accordance with the following procedure:

(a) The applicant will have the notice published allowing all persons claiming the land adversely to file in the appropriate land office their objections to the issuance of any conveyance. The notice shall be published once a week for 4 consecutive weeks in a newspaper of general circulation.

(b) The applicant shall file a statement of the publisher, accompanied by a copy of the published notice, showing that publication has been had for 4 consecutive weeks. The applicant must pay the cost of publication.

(c) Any adverse claimant must serve on the applicant a copy of his objections and furnish evidence of service thereof to the appropriate land office.

§ 2650.8 Appeals.

(a) Any decision adversely affecting any land selection shall become final, unless appealed to the Secretary by a notice filed in the office issuing the decision.

(b) Appeals to the Secretary shall be to the ad hoc Board as established in § 2651.2(a)(5) of this chapter. Appeals shall be filed and governed by the applicable regulations in part 4, subpart G of this title. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the ad hoc Board shall be submitted to the Secretary for his personal approval.

Subpart 2651—Village Selections

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2651.0–3	Authority.
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Subpart 2651—Village Selections

§ 2651.0–3 Authority.

Sections 12 and 16(b) of the act provide for the selection of lands by eligible village corporations.

§ 2651.1 Entitlement.

(a) Village corporations eligible for land benefits under the act shall be entitled to a conveyance to the surface estate in accordance with sections 14(a) and 16(b) of the act.

(b) In addition to the land benefits in paragraph (a) of this section, each eligible village corporation shall be entitled to select and receive a conveyance to the surface estate for such acreage as is reallocated to the village corporation in accordance with section 12(b) of the act.

§ 2651.2 Eligibility requirements.

(a) Pursuant to sections 11(b) and 16(a) of the act, the Director, Juneau Area Office, Bureau of Indian Affairs, shall review and make a determination, not later than December 19, 1973, as to which villages are eligible for benefits under the act.

(1) *Review of listed native villages.* The Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination of the eligibility of villages listed in section 11(b)(1) and 16(a) of the act. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to paragraph (b) of this section.

(2) *Findings of fact and notice of proposed decision.*—After completion of the investigation and examination of records and evidence with respect to the

eligibility of a village listed in sections 11(b)(1) and 16(a) of the act for land benefits, the Director, Juneau Area Office, Bureau of Indian Affairs, shall publish in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska his proposed decision with respect to such eligibility and shall mail a copy of the proposed decision to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska and the State of Alaska. His proposed decision is subject to protest by any interested party within 30 days of the publication of the proposed decision in the FEDERAL REGISTER. If no valid protest is received within the 30-day period, such proposed decision shall become final and shall be published in the FEDERAL REGISTER. If the final decision is in favor of a listed village, the Director, Juneau Area Office, Bureau of Indian Affairs, shall issue a certificate as to the eligibility of the village in question for land benefits under the act, and certify the record and the decision to the Secretary. Copies of the final decisions and certificates of village eligibility shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, and the state of Alaska.

(3) *Protest.*—Within 30 days from the date of publication of the proposed decision in the FEDERAL REGISTER, any interested party may protest a proposed decision as to the eligibility of a village. No protest shall be considered which is not accompanied by supporting evidence. The protest shall be mailed to the Director, Juneau Area Office, Bureau of Indian Affairs.

(4) *Action on protest.*—Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall examine and evaluate the protest and supporting evidence required herein, together with his record of findings of fact and proposed decision, and shall render a decision on the eligibility of the Native village that is the subject of the protest. Such decision shall be rendered within 30 days from the receipt of the protest and supporting evidence by the Director, Juneau Area Office, Bureau of Indian Affairs. The decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the FEDERAL REGISTER and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary by a notice filed with the ad hoc board as established in paragraph (a)(5) of this section, within 30 days of its publication in the FEDERAL REGISTER.

(5) *Action on appeals.*—Appeals to the Secretary shall be to the ad hoc Board which he has personally appointed. At least one member of the ad hoc Board shall be familiar with Native village life. Among those otherwise qualified to serve on the ad hoc Board, preference will be given to those familiar with Native village life. Appeals shall be fied and governed by the applicable regulations in part 4, subpart G, of this title, except that the appellant shall have not more than 15 days from the date of filing of his notice of appeal within which to file an appeal brief, and the opposing parties shall have not more than 15 days from the date of receipt of the appellant's brief within which to file an answering brief. No more than 15 days shall be allowed for the filing of additional briefs in connection with such appeals. All hearings held in connection with such appeals shall be conducted in the State of Alaska. The decision of the ad hoc Board shall be submitted to the Secretary for his personal approval.

(6) *Applications by unlisted villages for determination of eligibility.*—The head or any authorized subordinate officer of a Native village not listed in section 11(b) of the act may file on behalf of the unlisted village an application for a determination of its eligibility for land benefits under the act. Such application shall be filed in duplicate with the Director, Juneau Area Office, Bureau of Indian Affairs, prior to September 1, 1973. If the application does not constitute prima facie evidence of compliance with the requirements of paragraph (b) of this section, he shall return the application to the party filing the same with a statement of reasons for return of the application, but such filing, even if returned, shall constitute timely filing of the application. The Director, Juneau Area Office, Bureau of Indian Affairs, shall immediately forward an application which appears to meet the criteria for eligibility to the appropriate office of the Bureau of Land Management for filing. Each application must identify the township or townships in which the Native village is located.

(7) *Segregation of land.*—The receipt of the selection application for filing by the Bureau of Land Management shall operate to segregate the lands in the vicinity of the village as provided in sections 11(a) (1) and (2) of the act.

(8) *Action on application for eligibility.*—Upon receipt of an application which appears to meet the criteria for eligibility, the Director, Juneau Area Office, Bureau of Indian Affairs, shall have a notice of the filing of the application published in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall promptly review the statements contained in the application. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to this subpart 2651, and thereafter make findings of fact as to the character of the village. No later than December 19,

1973, the Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination as to the eligibility of the village as a Native village for land benefits under the act and shall issue a decision. He shall publish his decision in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall mail a copy of the decision to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations, and the State of Alaska.

(9) *Protest to eligibility determination.*—Any interested party may protest a decision of the Director, Juneau Area Office, Bureau of Indian Affairs, regarding the eligibility of a Native village for land benefits under the provisions of sections 11(b)(3) (A) and (B) of the act by filing a notice of protest with the Director, Juneau Area Office, Bureau of Indian Affairs, within 30 days from the date of publication of the decision in the FEDERAL REGISTER. A copy of the protest must be mailed to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations within Alaska, the State of Alaska, and any other parties of record. If no protest is received within the 30-day period, the decision shall become final and the Director, Juneau Area Office, Bureau of Indian Affairs, shall certify the record and the decision to the Secretary. No protest shall be considered which is not accompanied by supporting evidence. Anyone protesting a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect. Anyone appealing a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect.

(10) *Action on protest, appeal.*—Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall follow the procedure outlined in paragraph (a)(4) of this section. If an appeal is taken from a decision on eligibility, the provisions of paragraph (a)(5) of this section shall apply.

(b) Except as provided in subparagraph (4) of this paragraph, villages must meet each of the following criteria to be eligible for benefits under sections 14 (a) and (b) of the act:

(1) There must be 25 or more Native residents of the village on April 1, 1970, as shown by the census or other evidence satisfactory to the Secretary. A Native properly enrolled to the village shall be deemed a resident of the village.

(2) The village shall have had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time: *Provided,* That no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years.

(3) The village must not be modern and urban in character. A village will be considered to be of modern and urban character if the Secretary determines that it possessed all the following attributes as of April 1, 1970:

(i) Population over 600.

(ii) A centralized water system and sewage system that serves a majority of the residents.

(iii) Five or more business establishments which provide goods or services such as transient accommodations or eating establishments, specialty retail stores, plumbing and electrical services, etc.

(iv) Organized police and fire protection.

(v) Resident medical and dental services, other than those provided by Indian Health Service.

(vi) Improved streets and sidewalks maintained on a year-round basis.

(4) In the case of unlisted villages, a majority of the residents must be Native, but in the case of villages listed in sections 11 and 16 of the act, a majority of the residents must be Native only if the determination is made that the village is modern and urban pursuant to subparagraph (3) of this paragraph.

§ 2651.3 Selection period.

Each eligible village corporation must file its selection application(s) not later than December 18, 1974, under sections 12(a) or 16(b) of the act; and not later than December 18, 1975, under section 12(b) of the act.

§ 2651.4 Selection limitations.

(a) Each eligible village corporation may select the maximum surface acreage entitlement under sections 12 (a) and (b) and section 16(b) of the act. Village corporations selecting lands under sections 12 (a) and (b) may not select more than:

(1) 69,120 acres from land that, prior to January 17, 1969, has been selected by, or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act; and

(2) 69,120 acres of land from the National Wildlife Refuge System; and

(3) 69,120 acres of land from the National Forest System.

(b) To the extent necessary to obtain its entitlement, each eligible village corporation shall select all available lands within the township or townships within which all or part of the village is located, and shall complete its selection from among all other available lands. Selections shall be contiguous and, taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact, except where separated by lands which are unavailable for selection or a section in which a body of

water comprises more than one-half of the total acreage of a section. The total area selected will not be considered to be reasonably compact if (1) it excludes other lands available for selection within its exterior boundaries; or (2) lands which are similar in character to the village site or lands ordinarily used by the village inhabitants are disregarded in the selection process; or (3) an isolated tract of public land of less than 1,280 acres remains after selection.

(c) The lands selected under sections 12 (a) or (b) shall be in whole sections where they are available, or shall include all available lands in less than whole sections, and, wherever feasible, shall be in units of not less than 1,280 acres. Lands selected under section 16(b) of the act shall conform to paragraph (b) of this section and shall conform as nearly as practicable to the U.S. land survey system.

(d) Village corporation selections within sections 11 (a)(1) and (a)(3) areas shall be given priority over regional corporation selections for the same lands.

(e) Village or regional corporations are not required to select lands within an unpatented mining claim or millsite. Unpatented mining claims and millsites shall be deemed to be selected, unless they are excluded from the selection by metes and bounds or other suitable description and there is attached to the selection application a copy of the notice of location and any amendments thereto. If the village or regional corporation selection omits lands within an unpatented mining claim or millsite, this will not be construed as violating the requirements for compactness and contiguity. If, during the selection period, the excepted mining claims or millsites are declared invalid, or under the State of Alaska mining laws are determined to be abandoned, the selection will no longer be considered as compact and contiguous. The corporation shall be required to amend its selection, upon notice from the authorized officer of the Bureau of Land Management, to include the lands formerly included in the mining claim or millsite. If the corporation fails to amend its selection to include such lands, the selection may be rejected.

(f) Eligible village corporations may file applications in excess of their total entitlement. To insure that a village acquires its selection in the order of its priorities, it should identify its choices numerically in the order it wishes them granted. Such selections must be filed not later than December 18, 1974, as to sections 12(a) or 16(b) selections and December 18, 1975, as to section 12(b) selections.

(g) Whenever the Secretary determines that a dispute exists between villages over land selection rights, he shall accept, but not act on, selection applications from any party to the dispute until the dispute has been resolved in accordance with section 12(e) of the act.

§ 2651.5 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to village corporations shall provide for the transfer of the surface estates specified in section 14(c) of the act, and shall be subject to valid existing rights under section 14(g) of the act.

§ 2651.6 Airport and air navigation facilities.

(a) Every airport and air navigation facility owned and operated by the United States which the Secretary determines is actually used in connection with the administration of a Federal program will be deemed a "Federal installation" under the provisions of section 3(e) of the act, and the Secretary will determine the smallest practicable tract which shall enclose such Federal installations. Such Federal installations are not public lands as defined in the act and are therefore not "lands available for selection" under the provisions of these regulations.

(b) The surface of all other lands of existing airport sites, airway beacons, or other navigation aids, together with such additional acreage or easements as are necessary to provide related services and to insure safe approaches to airport runways, shall be conveyed by the village corporation to the State of Alaska, and the Secretary will include in the conveyance to any village corporation any and all covenants which he deems necessary to insure the fulfillment of this obligation.

Subpart 2652—Regional Selections

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2652.4	Conveyance reservations.

Subpart 2652—Regional Selections

§ 2652.0–3 Authority.

Sections 12 (a)(1) and (c)(3) provide for selections by regional corporations; and sections 14 (e), (f), (h) (1), (2), (3), (5), and (8), provide for the conveyance to regional corporations of the selected surface and subsurface estates, as appropriate.

§ 2652.1 Entitlement.

(a) Eligible regional corporations may select the maximum acreage granted pursuant to section 12(c) of the act. They will be notified by the Secretary of their entitlement as expeditiously as possible.

(b) Where subsurface rights are not available to the eligible regional corporations in lands whose surface has been conveyed under section 14 of the act, the regional corporations may select an equal subsurface acreage from lands withdrawn under sections 11(a) (1) and (3) of the act, within the region, if possible.

(c) As appropriate, the regional corporations will receive title to the subsur-

face estate of lands, the surface estate of which is conveyed pursuant to section 14 of the act.

(d) If a 13th regional corporation is organized under section 7(c) of the act, it will not be entitled to any grant of lands.

§ 2652.2 Selection period.

All regional corporations must file their selection applications not later than December 18, 1975, for lands other than those allocated under section 14(h)(8) of the act.

§ 2652.3 Selection limitations.

(a) To the extent necessary to obtain its entitlement, each regional corporation must select all available lands withdrawn pursuant to sections 11(a)(1) (B) and (C) of the act, before selecting lands withdrawn pursuant to section 11(a)(3) of the act, except that regional corporations selecting lands withdrawn pursuant to sections 11(a)(1) (B) and (C) may select only even-numbered townships in even-numbered ranges and only odd-numbered townships in odd-numbered ranges.

(b) Village corporation selections within section 11(a)(1) and section 11 (a)(3) areas shall be given priority over regional corporation selections for the same lands.

(c) Whenever a regional selection is made in any township, the regional corporation shall select all available lands in that township: *Provided,* That such selection would not exceed the entitlement of that regional corporation.

(d) Subsurface selections made by a regional corporation pursuant to section 12(a) of the act shall be contiguous and the total area selected shall be reasonably compact, except as separated by subsurface interests that are not the property of the United States including subsurface interests under bodies of water, and the selection shall be in whole sections where they are available, or shall include all available subsurface interests in less than whole sections and, wherever feasible, shall be in units of not less than 1,280 acres. The total area selected shall not be considered to be reasonably compact if (1) it excludes other subsurface interests available for selection within its exterior boundaries; or (2) an isolated tract of subsurface interests owned by the United States of less than 1,280 acres remains after selection.

(e) Regional corporations are not required to select lands within unpatented mining claims or millsites, as provided in § 2651.4(e) of this chapter.

(f) Regional corporations may file applications in excess of their total entitlement. To insure that a regional corporation acquires its selections in the order of its priorities, it should identify its choices numerically in the order it wishes them granted.

§ 2652.4 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to regional corporations for the subsurface estate of lands whose surface has been conveyed to village corporations shall provide that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the village corporation.

Subpart 2653—Miscellaneous Selections

Sec.	
2653.0–3	Authority.
2653.0–5	Definitions.
2653.1	Conveyance limitations.
2653.2	Application procedures.
2653.3	Lands available for selection.
2653.4	Termination of selection period.
2653.5	Cemetery sites and historical places.
2653.6	Native group selections.
2653.7	Sitka-Kenai-Juneau-Kodiak selections.
2653.8	Primary place of residence.
2653.8–1	Acreage to be conveyed.
2653.8–2	Primary place of residence criteria.
2653.9	Conveyance reservations.

Subpart 2653—Miscellaneous Selections

§ 2653.0–3 Authority.

Section 14(h) of the act requires the Secretary to withdraw and to convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 11 and 16 of the act. The Secretary will convey the land in part as follows:

(a) Title to existing cemetery sites and historical places to the regional corporations for the regions in which the lands are located;

(b) Title to the surface estate to any Native group that qualifies pursuant to this subpart 2653;

(c) Title to the surface estate of lands to the Natives residing in each of the cities of Sitka, Kenai, Juneau, and Kodiak, who have incorporated; and,

(d) Title to the surface estate of land to a Native as a primary place of residence.

§ 2653.0–5 Definitions.

(a) "Cemetery site" means a burial ground consisting of the gravesites of one or more Natives.

(b) "Historical place" means a distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry-picking, wood gathering, or reindeer husbandry.

(c) "Native group" means any tribe, band, clan, village, community or village association of Natives composed of less than 25, but more than 3 Natives, who comprise a majority of the residents of a locality and who have incorporated under the laws of the State of Alaska.

(d) "Primary place of residence" means a place comprising a primary place of residence of an applicant on August 31, 1971, at which he regularly resides on a permanent or seasonal basis for a substantial period of time.

§ 2653.1 Conveyance limitations.

(a) Under section 14(h) of the act, a total of 2 million acres may be selected for cemetery sites and historical places, Native groups, corporations formed by the Native residents of Sitka, Kenai, Juneau, and Kodiak, for primary places of residence, and for Native allotments approved as provided in section 18 of the act. Selections must be made within 4 years from December 18, 1971. Of this total amount: (1) 500,000 acres will be set aside to be used by the Secretary to satisfy applications filed pursuant to sections 14(h) (1), (2), and (5) of the act. The 500,000 acres will be allocated by: (i) Dividing 200,000 acres among the regions, based on population; and, (ii) dividing 300,000 acres equally among the regions; (2) 92,160 acres will be set aside for possible allocation by the Secretary to corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak; (3) 400,000 acres will be set aside to be used by the Secretary to satisfy Native allotment applications approved prior to December 18, 1975, under the act of May 17, 1906 (34 Stat. 197), the act of February 8, 1887 (24 Stat. 389), as amended and supplemented, and the act of June 25, 1910 (36 Stat. 863). Any Native allotment applications pending before the Bureau of Indian Affairs or the Bureau of Land Management on December 18, 1971, will be considered as "pending before the Department". Those allotment applications which have been determined to meet the requirements of the acts cited herein and for which survey has been requested before December 18, 1975, shall be considered "approved" under section 14(h)(6) of the act, and shall be charged against the acreage.

(b) After subtracting the number of acres used in accordance with allocations in paragraphs (a) (1), (2), and (3) of this section, from 2 million acres, the remainder will, after December 18, 1975, be reallocated by the Secretary among the regional corporations in accordance with the provisions of section 14(h)(8) of the act.

(c) No Native allotment applications pending before the Secretary on December 18, 1971, will be rejected solely for the reason that the acreage set aside by paragraph (a)(3) of this section has been exhausted.

§ 2653.2 Application procedures.

(a) All applications must be filed in accordance with the procedures in § 2650.2(a) of this chapter.

(b) Applications by corporations of Native groups under section 14(h)(2) and by a Native for a primary place of residence under section 14(h)(5) of the act must be accompanied by written concurrence of the affected regional corporation. In the case of Native groups, such concurrence must also indicate how much land per member of the Native group, not to exceed 320 acres per member, the regional corporation recommends that the Secretary convey. Any application not accompanied by the necessary concurrence and recommendation of the affected region will be rejected.

(c) Native groups, and Natives residing in Sitka, Kenai, Juneau, and Kodiak, as provided in sections 14(h) (2) and (3), respectively, must comply with the applicable terms of §§ 2650.2(a), (c), (d), (e), and (f) of this chapter.

(d) The filing of an application under the regulations of this section will constitute a request for withdrawal of the lands, and will segregate the lands from all other forms of appropriation under the public land law, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended, subject to valid existing rights, but will not segregate the lands from selections under section 12 or 16 of the act. The segregative effect of such an application will terminate if the application is rejected.

§ 2653.3 Lands available for selection.

(a) Selections may be made for existing cemetery sites or historical places, Native groups, corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak, and for primary places of residence, from any lands which the Secretary may withdraw for those purposes out of the National Wildlife Refuge System lands or the national forest lands which are outside of areas withdrawn by sections 11 and 16, as provided by section 14(h)(7) of the act.

(b) After December 18, 1975, selection of the lands allocated pursuant to § 2653.1(b), shall be made from any lands previously withdrawn under sections 11 or 16 of the act which are not otherwise appropriated. If the public lands withdrawn within the region pursuant to sections 11 or 16 of the act, and not otherwise appropriated, are insufficient for the selection of the full entitlement of the regional corporations pursuant to § 2653.1(b), then three times the amount of the entitlement which cannot be satisfied from lands previously withdrawn pursuant to sections 11 or 16 of the act will be withdrawn pursuant to section 14(h) of the act.

(c) A withdrawal made pursuant to section 17(d) (1) or (2) of the act shall not preclude a withdrawal pursuant to section 14(h) of the act.

§ 2653.4 Termination of selection period.

Applications for selections under this subpart will be rejected after all allocated lands, as provided in § 2653.1, have been exhausted, or if the application is received after the following dates, whichever occurs first:

(a) As to primary place of residence—December 18, 1973.

(b) As to all recipients described in sections 14(h) (1), (2), and (3) of the act—December 18, 1975.

(c) As to all recipients under section 14(h)(8) of the act and § 2653.1(b)—December 18, 1977.

§ 2653.5 Cemetery sites and historical places.

(a) The appropriate regional corporation may apply to the Secretary for the conveyance of existing cemetery sites or historical places pursuant to section 14(h) of the act. The Secretary may give favorable consideration to these applications: *Provided,* That the Secretary determines that the criteria in these regulations are met: *And provided further,* That the regional corporation agrees to accept a covenant in the conveyance that these cemetery sites or historical places will be maintained and preserved solely as cemetery sites or historical places by the regional corporation, in accordance with the provisions for conveyance reservations in § 2653.9.

(b) The survey of selected sites shall include only the area actually used and a reasonable buffer zone, not over 66 feet wide around abandoned cemeteries; not over 330 feet wide around an area identified as an historical place; and an area to provide reasonable future expansion around active cemeteries.

§ 2653.6 Native group selections.

(a) Native groups in existence on December 18, 1971, who incorporate in accordance with the laws of the State of Alaska may file applications to select the surface estate of not more than 7,680 acres.

(b) Native group selections must meet the criteria of compactness and contiguity specified in § 2651.4 (b) and (d) of this chapter.

(c) Native group selections shall not exceed the amount recommended by the regional corporation or 320 acres for each Native member of a group, or 7,680 acres for each Native group, whichever is less. Application must be for land in the area surrounding the locality in which the Native members of a group reside and are enrolled. Non-Native members of a group are not eligible for any benefit hereunder.

§ 2653.7 Sitka-Kenai-Juneau-Kodiak selections.

(a) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, who incorporate under the laws of the State of Alaska, may each select the surface estate of up to 23,040 acres of lands of similar character located in reasonable proximity to those municipalities.

(b) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, shall nominate not less than 92,160 acres of lands within 50 miles of each of the four named cities which are similar in character to the lands in which each of the cities is located, After review and public hearings, the Secretary shall withdraw up to 46,080 acres near each of the cities from the lands nominated. Each corporation representing the Native residents of the four named cities may select not more than one-half the area withdrawn for selection by that corporation. The Secretary shall convey the area selected.

§ 2653.8 Primary place of residence.

(a) An application under this subpart may be made by a Native who occupied land as a primary place of residence on August 31, 1971.

(b) Applications for a primary place of residence must be filed not later than December 18, 1973.

§ 2653.8–1 Acreage to be conveyed.

A Native may secure title to the surface estate of only a single tract not to exceed 160 acres under the provisions of this subpart, and shall be limited to the acreage actually occupied and used. An application for title under this subpart shall be accompanied by a certification by the applicant that he will not receive title to any other tract of land pursuant to sections 14 (c)(2), (h)(2), or 18 of the act.

§ 2653.8–2 Primary place of residence criteria.

(a) *Periods of occupancy.*—Casual or occasional use will not be considered as occupancy sufficient to make the tract applied for a primary place of residence.

(b) *Improvements constructed on the land.*—(1) Must have a dwelling.

(2) May include associated structures such as food cellars, drying racks, caches, etc.

(c) *Evidence of occupancy.*—Must have evidence of permanent or seasonal occupancy for substantial periods of time.

§ 2653.9 Conveyance reservations.

(a) Conveyances issued pursuant to this subpart are subject to the conveyance reservations described in § 2650.4 of this chapter.

(b) In addition to the reservations provided in paragraph (a) of this section, conveyances for cemetery sites or historical places will contain a covenant running with the land providing that (1) the regional corporation grantee shall not authorize mining or mineral activities of any type, any commercial activities, or any other use which is incompatible with or is in derogation of the values of the area as a cemetery site or historical place; and (2) that the United States reserves the right to seek enforcement of the covenant in an action in equity. The covenant placed in a conveyance pursuant to this subsection may be released by the Secretary, in his discretion, upon application of the regional corporation grantee showing that extraordinary circumstances, of a nature to warrant the release, have arisen subsequent to the conveyance.

(c) Conveyances for cemetery sites and historical places shall also contain the covenant required by § 2650.4–6 of this chapter.

Subpart 2654—Native Reserves

Sec.
2654.0–3 Authority.
2654.0–5 Definitions.
2654.1 Exercise of option.
2654.2 Application procedures.
2654.3 Conveyances.

Subpart 2654—Native Reserves

§ 2654.0–3 Authority.

Section 19(b) of the act authorizes any village corporation(s) located within a reserve defined in the act to acquire title to the surface and subsurface estates in any reserve set aside for the use and benefit of its stockholders or members prior to December 18, 1971. Such acquisition precludes any other benefits under the act.

§ 2654.0–5 Definitions.

"Reserve lands" means any lands reserved prior to the date of enactment of the act which are subject to being taken in lieu of other benefits under the act pursuant to section 19(b) of the act.

§ 2654.1 Exercise of option.

(a) Any village corporation which has not, by December 18, 1973, elected to acquire title to the reserve lands will be deemed to have elected to receive for itself and its members the other benefits under the Act.

(b) The election of a village to acquire title to the reserve lands shall be exercised in the manner provided by its articles of incorporation. However when two or more villages are located on the same reserve there must be a special election to acquire title to the reserve lands. A majority vote of all the stockholders or members of all corporations located on the reserve is required to acquire title to the reserve lands. For the purpose of this paragraph the stockholders or members shall be determined on the basis of the roll of village residents proposed to be promulgated under 25 CFR 43h.7. The regional corporation or village corporations or any member or stockholder of the village corporations involved may request that the election be observed by the Bureau of Indian Affairs.

(c) The results of any election by a village corporation or corporations to acquire title to the reserve lands shall be certified by such village corporation or corporations as being in conformity with the articles of incorporation and bylaws of the village corporation or corporations.

§ 2654.2 Application procedures.

(a) If the corporation or corporations elect to take title to the reserve lands, submission to the Secretary of the certificate of election will constitute an application to acquire title to those lands.

(b) If the village corporation or corporations do not elect to take the reserve lands, they shall apply for their land selections pursuant to subpart 2651 of this chapter.

§ 2654.3 Conveyances.

(a) Conveyances under this subpart are subject to the provisions of section 14(g) of the act, as provided by § 2650.4 of this chapter.

(b) Conveyances under this subpart to two or more village corporations will be made to them as tenants-in-common, having undivided interests proportionate to the number of their respective members or stockholders determined on the basis of the final roll promulgated by the Secretary pursuant to section 5 of the act.

ROGERS C. B. MORTON,
Secretary of the Interior.

MAY 23, 1973.

[FR Doc.73–10598 Filed 5–29–73;8:45 am]

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

[Circular 2344]

PART 2800—RIGHTS-OF-WAY

Advance Permission

replaced by 2384

Section 2801.1–4 is revised to read as follows:

§ 2801.1–4 Unauthorized occupancy.

Any occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass.

JACK O. HORTON,
Assistant Secretary of the Interior.

JUNE 21, 1973.

[FR Doc.73–12912 Filed 6–26–73;8:45 am]

Published in 38 F.R. 16867, June 27, 1973 - Effective August 1, 1973.

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[Circular 2345]

Technical Amendments

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

The U.S. Civil Service Commission published in the FEDERAL REGISTER on August 19, 1972 (37 FR 16787), a rule changing the title of hearing examiner, as used in 5 CFR part 930, subpart B, to administrative law judge.

In order to conform the Department's rules and regulations to that change in title, the Secretary of the Interior, pursuant to the authority vested in him under 5 U.S.C. section 301, promulgates technical amendments to the Department's rules and regulations throughout Subtitle A of Title 43, Code of Federal Regulations, as follows: All references to the terms hearing examiner and examiner are deemed deleted and replaced by the term administrative law judge, except as the context otherwise requires. All references to the term Chief Hearing Examiner are deemed deleted and replaced by the term Chief Administrative Law Judge.

As the amendments relate to matters of internal Department organization and practice, the prior notice and public procedure provisions of 5 U.S.C. section 553 are inapplicable.

These changes are effective as of August 19, 1972.

Dated April 27, 1973.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc.73-8638 Filed 5-2-73;8:45 am]

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

The U.S. Civil Service Commission published in the FEDERAL REGISTER on August 19, 1972 (37 FR 16787), a rule changing the title of hearing examiner, as used in 5 CFR part 930, subpart B, to administrative law judge.

In order to conform the Department's rules and regulations to that change in title, the Secretary of the Interior, pursuant to authority vested in him under 5 U.S.C. section 301, promulgates technical amendments to the Department's rules and regulations throughout Chapter II and Title 43, Code of Federal Regulations, as follows: All references to the terms hearing examiner and examiner are deemed deleted and replaced by the term administrative law judge.

As the amendments relate to matters of internal Department organization and practice, the prior notice and public procedure provisions of 5 U.S.C. section 553 are inapplicable.

These changes are effective as of August 19, 1972.

Dated April 27, 1973.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc. 73-8637 Filed 5-2-73;8:45 am]

Published in 38 F.R. 10939, May 3, 1973 - Effective August 19, 1973.

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Published in 38 F.R. 10939, May 3, 1973 - Effective August 13, 1973.

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2346]

PART 3540—USE PERMITS

Subpart 3541—Mineral Collection Permits

A new subpart is added to Part 3540 to read as follows:

Subpart 3541—Mineral Collection Permits

Sec.
3541.0–1 Purpose.
3541.0–2 Objectives.
3541.0–5 Definitions.
3541.1 Lands to which applicable.
3541.2 Permit requirements.
3541.3 Fees for issuance of permits.
3541.4 Terms and conditions of permits.
3541.5 Penalty for violations.
3541.6 Trespass.

Subpart 3541—Mineral Collection Permits

§ 3541.0–1 Purpose.

The purpose of the regulations in this Subpart 3541 is to authorize mineral collectors to enter upon lands pursuant to § 3501.2–6(d) of this chapter for the purpose of searching for and removing mineral specimens.

§ 3541.0–2 Objectives.

The objective is to make certain acquired lands within the National Forest System available to mineral collectors at a reasonable fee and under terms and conditions necessary for the conservation of natural resources, multiple use of National Forest System lands, equitable distribution of recreation privileges, and public safety.

§ 3541.0–5 Definitions.

For purposes of the regulations in this Subpart 3541,

(a) "Chief" is the Chief of the Forest Service or his delegate.

(b) "Fee" is a user charge for searching for and removing mineral specimens. It includes a reasonable amount to defray the cost of rehabilitation and revegetation of the lands.

(c) "Permit" is the authorization issued upon payment of a fee to a permittee to search for or remove mineral specimens.

(d) "Permittee" is the holder of a permit.

§ 3541.1 Lands to which applicable.

The acquired lands for which a permit may be obtained are clearly identifiable by boundary markings and corner monuments at each site and by a boundary map available for public inspection in the offices of the Forest Supervisor and District Ranger in charge of the lands. Areas designated for mineral collecting are described as follows:

EMERALD CREEK GARNET AREA

On the East Fork of Emerald Creek, St. Maries Ranger District, St. Joe National Forest, Idaho, about 8 airline miles south of Fernwood and 4 miles west of Clarkia.

MOAT MOUNTAIN SMOKY QUARTZ AREA

About 1,000 feet south of Thompson Falls on Elm Brook, Town of Hales location, on the Saco Ranger District, White Mountain National Forest, N.H., and about 5 miles northwest of Ranger District headquarters in Conway.

§ 3541.2 Permit requirements.

Any individual who desires to search for or remove mineral specimens on acquired National Forest System lands must first have a permit to do so on the lands involved, signed by the authorized representative of the Bureau of Land Management. Permits can be secured in person from the District Ranger in charge of the area.

§ 3541.3 Fees for issuance of permits.

Fees will be determined by the Director and will be based on charges for comparable privileges on private and State lands, including recognition of the costs of supervising the activities of permittees, maintaining and providing improvements, and rehabilitating and revegetating the lands disturbed by mineral collecting.

Published in 38 F.R. 18883, July 16, 1973 - Effective August 13, 1973.

Circular Distribution List

§ 3541.4 Terms and conditions of permits.

The permit will contain terms and conditions which are deemed necessary by the Director and by the Chief to achieve the objectives of the regulations in this subpart, including, but not limited to, the following:

(a) Limits on the amount of material that may be taken by a permittee per day, calendar year, or other period of time, and the total number of days per calendar year any permittee shall be permitted to collect on any site.

(b) Prohibition or restriction of the use of explosives.

(c) Specifications as to the type of tools and equipment which may be used.

(d) Measures to be taken to prevent destruction of other natural resources or antiquities, to rehabilitate the land after removal of mineral specimens, and to protect the environment in any other respect deemed desirable.

(e) Use of fire.

(f) Cleanup.

(g) Avoidance of hazards.

§ 3541.5 Penalty for violations.

Permits are subject to immediate cancellation if any of the terms and conditions are violated. In such case no portion of the fee will be refunded. The Director may refuse to issue a permit to any individual who violated the terms and conditions of any prior permit.

§ 3541.6 Trespass.

Removal of mineral specimens from any National Forest System lands described in § 3541.1 without, or in violation of, a permit issued under the regulations in this subpart is a trespass against the United States. Trespassers will be liable in damages to the United States and may be subject to criminal prosecution.

JACK O. HORTON,
Assistant Secretary of the Interior

[FR Doc.73-14457 Filed 7-13-73;8:45 am]

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2347]

WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT

Protection, Management, Control and Reservation of Forage

replaced by 2383

Subchapter D, Chapter II, of Title 43 of the Code of Federal Regulations is amended as follows:

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

1. The first sentence of paragraph (d) of § 4115.2–1 of Subpart 4115 is revised to read as follows:

§ 4115.2–1 License and permit procedures; requirements and conditions.

* * * * *

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.1–1(k)(4), 4114.4–4, 4115.2–5(a)(6), 4712.1–3, or 4712.1–4 of this chapter.

* * * * *

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

2. Paragraph (a) of § 4121.2–1 of Subpart 4121 is revised to read as follows:

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land Resource Consideration.* The authorized officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, wild free-roaming horses and burros, and other multiple uses.

* * * * *

3. A new Group 4700 is added to Subchapter D to read as follows:

Group 4700—Wild Free-Roaming Horse and Burro Management

PART 4710—WILD FREE-ROAMING HORSE AND BURRO MANAGEMENT; GENERAL

Subpart 4710—Purpose; Objectives; Authority; Definitions; Policy

Sec.
4710.0–1 Purpose.
4710.0–2 Objectives.
4710.0–3 Authority.
4710.0–5 Definitions.
4710.0–6 Policy.

Subpart 4711—Management Coordination

4711.1 Recommendations from the joint national advisory board on wild free-roaming horses and burros.
4711.2 State agencies.
4711.3 Cooperative agreements.

Subpart 4712—Management Considerations

4712.1 Management; General.
4712.1–1 Planning.
4712.1–2 Intensity of management.
4712.1–3 Habitat reservation and allocation.
4712.1–4 Closures to livestock grazing.
4712.2 Establishment of specifically designated ranges or herd management areas.
4712.2–1 Designation.
4712.2–2 Criteria for designation.
4712.2–3 Management plan.
4712.3 Removal and relocation or disposal of excess animals.
4712.3–1 Method of capture.
4712.3–2 Relocation of animals.
4712.3–3 Disposal.
4712.3–4 Acts of mercy.
4712.3–5 Disposal of carcasses.
4712.4 Animals on private lands.
4712.4–1 Allowing animals on private lands.
4712.4–2 Active maintenance of animals on private lands.
4712.4–3 Removal of animals from private lands.

Subpart 4713—Protection of Wild Free-Roaming Horses and Burros in the Identification and Removal of Claimed and Trespass Horses and Burros

4713.1 General.
4713.2 Action on claims.

Subpart 4714—Enforcement Provisions

4714.1 Arrest.
4714.2 Penalties.

Subpart 4710—Purpose; Objectives; Authority; Definitions; Policy

§ 4710.0–1 Purpose.

To implement the laws relating to wild free-roaming horses and burros on public lands.

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Circular Distribution List

§ 4710.0–2 Objectives.

The objective of these regulations is to provide criteria and procedures for protecting, managing, and controlling wild free-roaming horses and burros as a recognized component of the public land environment.

§ 4710.0–3 Authority.

The Act of December 15, 1971 (16 U.S.C. 1331–1340), and the Act of June 28, 1934 (43 U.S.C. 315–315r).

§ 4710.0–5 Definitions.

(a) "Authorized Officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described herein.

(b) "Wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros and their progeny that have used public lands on or after December 15, 1971, or that do use these lands as all or part of their habitat, including those animals given an identifying mark upon capture for live disposal by the authorized officer. Unbranded, claimed horses and burros where the claim is found to be erroneous are also considered as wild and free-roaming if they meet the criteria above. However, this definition shall not include any horse or burro which entered or was introduced onto public lands after December 15, 1971, by accident, negligence, or willful disregard of ownership.

(c) "Herd" means one or more stallions and their mares or jacks and their jennies.

(d) "Excess animals" means wild free-roaming horses or burros determined to be in excess of populations proper to maintain a thriving natural ecological balance and harmonious multiple-use relationship in an area of the public lands.

(e) "Problem animal" means a wild free-roaming horse or burro whose demonstrated individual habits or traits pose an undue threat to the safety or welfare of persons, wildlife, livestock, or property; or a wild free-roaming horse or burro infected by a contagious disease or suspected of being diseased or seriously ill.

(f) "Public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management.

(g) "Wild horse or burro range" means a specifically designated area of land needed to sustain a herd or herds of wild free-roaming horses or burros, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple use management of the public lands.

(h) "Management plan" means a written program of action designed to protect, manage, and control wild free-roaming horses and burros and maintain a natural ecological balance on the public lands.

(i) "Act" means the Act of December 15, 1971 (16 U.S.C. 1331–1340).

(j) "Advisory Board" means the joint advisory board established by the Secretary of the Interior and the Secretary of Agriculture pursuant to section 7 of the Act.

§ 4710.0–6 Policy.

(a) Wild free-roaming horses and burros are under the jurisdiction of the Secretary of the Interior and will be managed as an integral part of the natural systems of the public lands. They will be protected from unauthorized capture, branding, undue disturbance, and destruction. They and their habitat will be managed and controlled in a manner designed to achieve and maintain a thriving ecological balance on the public lands and a thriving population of sound, healthy individuals, all in accordance with the basic program policies for public land management set forth in Subpart 1725 of this chapter.

(b) Wild free-roaming horses and burros on the public lands will be managed by the authorized officer, with full public participation and such cooperative arangements as he may find helpful. Management on public lands will not be assigned to any private individual or association through a grazing license, lease, or permit.

Subpart 4711—Management Coordination

§ 4711.1 Recommendations from the joint national advisory board on wild free-roaming horses and burros.

Policies and guidelines relative to proposals for establishment of ranges, proposed management plans, adjustments in number, relocation and disposal of animals, and other matters relating generally to the protection, management, and control of wild free-roaming horses and burros shall be presented to the Advisory Board for recommendations.

§ 4711.2 State agencies.

(a) All management activities including, but not limited to, establishment of ranges and adjustments in forage allocation shall be planned and executed in consultation with the appropriate State agency to further consider the needs of all wildlife, particularly endangered species.

(b) All actions taken in connection with private ownership claims to unbranded horses and burros shall be coordinated to the fullest extent possible with the appropriate State agency.

§ 4711.3 Cooperative agreements.

The authorized officer may enter into cooperative agreements with other landowners, private citizens, nonprofit organizations, and with Federal, State, and local governmental agencies as he deems necessary for purposes of protecting, managing and controlling wild free-roaming horses and burros. Where the grazing patterns of the animals require utilization of lands in other ownerships or administration, the authorized officer shall seek cooperative agreements to insure continuance of such use.

Subpart 4712—Management Considerations

§ 4712.1 Management; general.

§ 4712.1–1 Planning.

In planning for management, protection, and control of wild free-roaming horses and burros, including the establishment of specifically designated ranges, determination of desirable numbers and other management provisions of these regulations, the authorized officer will utilize the Bureau's multiple-use planning system with its requirements for public participation by and coordination with others.

§ 4712.1–2 Intensity of management.

Wild free-roaming horse or burro herds may be managed either as one of the components of public land use or on a specifically designated wild horse or burro range. Management practices shall be at the minimal feasible level and shall be consistent to the extent possible and practical with the maintenance of their free-roaming behavior. Management facilities should be designed and constructed to the extent possible to maintain the free-roaming behavior of the herds.

§ 4712.1–3 Habitat reservation and allocation.

The biological requirements of wild free-roaming horses and burros will be determined based upon appropriate studies or other available information. The needs for soil and watershed protection, domestic livestock, maintenance of environmental quality, wildlife, and other factors will be considered along with wild free-roaming horse and burro requirements. After determining the optimum number of such horses and burros to be maintained on an area, the authorized officer shall reserve adequate forage and satisfy other biological requirements of such horses and burros and, when necessary, adjust or exclude domestic livestock use accordingly. See §§ 4115.2–1(d) and 4121.2–1(a) of this chapter.

§ 4712.1–4 Closures to livestock grazing.

The authorized officer may close public lands to use by all or a particular class of domestic livestock where he finds it necessary to allocate all available forage to, or to satisfy other biological requirements of, wild free-roaming horses or burros. Such closures may be made only after appropriate public notice and in accordance with the procedures for reduction or cancellation of grazing privileges provided for under the provisions of this subchapter. See §§ 4115.2–1(d) and 4121.2–1(a) of this chapter.

§ 4712.2 Establishment of specifically designated ranges or herd management areas.

§ 4712.2–1 Designation.

The authorized officer may designate and maintain specifically designated ranges principally for the protection and preservation of wild free-roaming horses and burros.

§ 4712.2–2 Criteria for designation.

In designating specific ranges and herd management areas, the authorized officer, in addition to any other provisions of these regulations, shall:

(a) Consider only those areas utilized by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) Consider only those areas where self-sustaining herds can maintain themselves within their established utilization and migratory patterns.

(c) Consider only those areas which are capable of being managed as a unit to ensure a sustained yield of forage without jeopardy to the resources.

(d) Develop a wild free-roaming horse or burro management plan in accordance with § 4712.2–3.

§ 4712.2–3 Management plan.

The authorized officer shall, in connection with the designation of a specific range, develop a proposed wild free-roaming horse or burro management plan designed to protect, manage, and control wild free-roaming horses and burros on the area on a continuing basis. The authorized officer may also develop herd management plans as part of the multiple use management on areas outside of specifically designated wild horse or burro ranges. All management plans shall be developed in accordance with the Bureau's planning system and shall govern management of the area.

§ 4712.3 Removal and relocation or disposal of excess or problem animals.

§ 4712.3–1 Method of capture.

Under the supervision of the authorized officer, wild free-roaming horses and burros may be captured, corralled and held under humane conditions pending disposal of excess or problem animals under the provisions of this Subpart.

§ 4712.3–2 Relocation of animals.

(a) The authorized officer may relocate wild free-roaming horses and burros on public lands when he determines such action is necessary to: (1) Relieve overgrazed areas, (2) locate animals removed from private lands in accordance with § 4712.4–3, (3) remove problem animals, or (4) achieve other purposes deemed to be in the interest of proper resource and herd management. Such animals relocated on public lands shall not be introduced onto areas of the public lands which were not used by wild free-roaming horses or burros as all or part of their habitat on December 15, 1971.

(b) The authorized officer may also place animals in the custody of private persons, organizations or other governmental agencies. Custodial arrangements shall be made through cooperative agreement which shall include provisions to maintain and protect the animals and ensure that the animals will not be used for commercial exploitation. The authorized officer may, in his discretion, mark animals placed in private custody for identification purpose.

§ 4712.3–3 Disposal.

Where the authorized officer finds it necessary to remove excess animals from areas of the public lands, and he determines that it is not practical to relocate them on public lands or capture and remove them for private maintenance under § 4712.3–2, he may destroy such animals in the most humane manner possible. No person, except the authorized officer or his authorized representative, shall destroy wild free-roaming horses and burros.

§ 4712.3–4 Acts of mercy.

Any severely injured or seriously sick animals will be destroyed in the most humane manner possible as an act of mercy.

§ 4712.3–5 Disposal of carcasses.

Carcasses shall be disposed of in any customary manner under State sanitary statutes. In no event shall carcasses, or any part thereof, including those in the authorized possession of private parties, be sold or processed into a commercial product.

§ 4712.4 Animals on private lands.

§ 4712.4–1 Allowing animals on private lands.

Nothing in these regulations shall preclude a private landowner from allowing wild free-roaming horses and burros to remain on his private lands so long as the animals were not willfully removed, enticed, or retained by him or his agent from the public lands.

§ 4712.4–2 Active maintenance of animals on private lands.

Any individual who actively maintains wild free-roaming horses and burros on his private lands shall notify the authorized officer and supply him with a reasonable approximation of their number and location and, when required by the authorized officer, a description of the animals. Thereafter, he shall furnish an annual report updating the information during the month of January. An individual will be considered to be actively maintaining wild free-roaming horses or burros if he takes measures of any kind designed to protect or enhance the welfare of the animals. No person shall maintain such animals except under cooperative agreement between the private landowner and the authorized officer setting forth the management and maintenance requirements including provisions for regulating disposal of excess animals.

§ 4712.4–3 Removal of animals from private lands.

The authorized officer shall remove, as soon as he can make the necessary arrangements, wild free-roaming horses and burros, from private land at the request of the landowner where the private land is enclosed in a "legal fence." A "legal fence" for this purpose is one which complies with State standards and specifications. In "no fence districts" or other areas where the private landowner is not required by State statute to fence the private land to protect it from trespass by domestic livestock, the authorized officer shall, as soon as he can make the necessary arrangements, remove wild free-roaming horses or burros from such private land at the request of the landowner.

Subpart 4713 is revised. The full text of revised subpart 4713 follows:

Subpart 4713—Protection of Wild Free-Roaming Horses and Burros in the Identification and Removal of Claimed and Trespass Horses and Burros

§ 4713.1 General.

(a) All unauthorized and unbranded horses and burros on the public lands, except those which entered or were introduced onto the public lands after December 15, 1971, by accident, negligence, or willful disregard of ownership are presumed for the purpose of management to be wild free-roaming horses or burros.

(b) The gathering or rounding up of unbranded horses or burros on the public lands where any of such animals are not in fact authorized to be on the public lands pursuant to a grazing license, permit, lease, or other authorization, is prohibited without written authorization from the authorized officer. Also prohibited without written authorization from the authorized officer is the gathering or rounding up of unauthorized branded horses or burros where the branded animals are, or may become, intermingled with wild free-roaming horses or burros, or where the gathering or round up is likely to involve or affect wild free-roaming horses or burros.

§ 4713.2 Action on claims.

(a) Any person claiming ownership under state branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership, with supporting evidence, shall be submitted within 90 days of the effective date of these regulations. All written authorizations to gather claimed animals shall be on a form approved by the Director. After such public notice as the authorized officer deems appropriate to inform interested parties, he may authorize the gathering or roundup. The authorized officer shall provide in the authorization that the gathering or roundup shall be consistent with the legislation which prohibits the use of aircraft or motor vehicles to capture unbranded horses or burros; shall establish in the authorization a reasonable period of time to allow the gathering of the claimed animals; and shall provide such other conditions in the authorization which he deems necessary to minimize stress on any associated wild free-roaming horses or burros and to protect other resources.

(b) After the animals have been gathered the authorized officer and the appropriate state or local official shall inspect each claimed animal in relation to the evidence of ownership previously presented by the claimant. The state or local official shall then make a written determination of ownership concerning each claimed animal pursuant to the state branding and estray laws and any agreement between the Bureau and the appropriate state or local authority. A copy of the written determination shall be provided to the authorized officer. No animal may be removed from the gathering place until the claim of ownership has been proven to the satisfaction of the authorized officer.

(c) Unauthorized horses or burros which have been claimed and have been determined to be privately owned in accordance with the provisions of this Section will be considered to have been in trespass and may not be released until a proper trespass charge has been determined by the authorized officer in accordance with the provisions of 43 CFR 9239.3.

Subpart 4714—Enforcement Provisions

§ 4714.1 Arrest.

The Director of the Bureau of Land Management may authorize such employees as he deems necessary to arrest without warrant, any person committing in the presence of the employee a violation of the Act or of these regulations and to take such person immediately for examination or trial before an officer or court of competent jurisdiction. Any employee so designated shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of the Act or these regulations.

§ 4714.2 Penalties.

In accordance with section 8 of the Act (16 U.S.C. 1338), any person who:

(a) Willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the authorized officer, or

(b) Converts a wild free-roaming horse or burro to private use, without authority from the authorized officer, or

(c) Maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(d) Processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(e) Sells, directly or indirectly, a wild free-roamng horse or burro maintained on private or leased land pursuant to section 4 of the Act, or the remains thereof, or

(f) Willfully violates any provisions of the regulations under Group 4700, shall be subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both. Any person so charged with such violation by the authorized officer may be tried and sentenced by a U.S. commissioner or magistrate, designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in section 3401, Title 18, U.S.C

W. R. WILSON,
Acting Deputy Assistant Secretary of the Interior.

AUGUST 13, 1973.

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2348]

PART 3110—NONCOMPETITIVE LEASES

Subpart 3112—Simultaneous Offers

OFFER TO LEASE

Replaced by Circ 2357

Subpart 3112 of Chapter II is amended as follows:

1. Subparagraphs (1), (2), (3) of paragraph (a) of § 3112.2–1 are revised and a subparagraph 4 is added to read as follows:

§ 3112.2–1 Offer to lease.

(a) * * *

(1) The entry card must be accompanied by a remittance covering the filing fee of $10. The filing fee may be paid in cash or by money order, bank draft, bank cashier's check or check.

(2) Only one complete leasing unit, identified by parcel number, may be included in one entry card. Lands not on the posted list may not be included. An offeror (applicant) is permitted to file only one offer to lease (entry card) for each numbered parcel on the posted list. Submission of more than one entry card by or on behalf of the offeror for any parcel on the posted list will result in the disqualification of all the offers submitted by that applicant for that particular parcel.

(3) Three entry cards will be drawn for each numbered leasing unit, and the order in which they are drawn will fix the order in which the successful drawee will be determined. Where less than three entry cards have been filed, all cards will be drawn to determine priority.

(4) Unsuccessful drawees will be notified by the return of their respective entry cards.

2. Section 3112.4–1 is revised to read as follows:

§ 3112.4–1 Rental payment.

A lease will be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

3. Section 3112.5–1 is revised as follows:

§ 3112.5–1 Unqualified offeror.

If the successful drawees for a particular leasing unit are unqualified to receive the lease for any reason, including timely payment of the first year's rental, the lands in the numbered leasing unit shall be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

§ 3112.5–3 [Deleted]

4. Section 3112.5–3 is deleted.

JACK O. HORTON,
Assistant Secretary of the Interior.

AUGUST 15, 1973.

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Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2350]

PART 3830—LOCATION OF MINING CLAIMS

Subpart 3831—Rights to Mineral Lands

LOCATION OF PLACER CLAIMS

Section 3831.1 of Subpart 3831 of Chapter II is revised to read:

§ 3831.1 Manner of initiating rights under locations.

Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of minerals, by locating the lands upon which such discovery has been made. A location is made by (a) staking the corners of the claim, except placer claims described by legal subdivision where State law permits locations without marking the boundaries of the claims on the ground, (b) posting notice of location thereon, and (c) complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

JACK O. HORTON,
Assistant Secretary of the Interior.

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